

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	
and)	
)	No. 01 C 4427
MARION TOWNSON, PHYLLIS LOPEZ,)	
and RHONDA PORTER,)	The Honorable Joan B. Gottschall
)	
Plaintiffs-Intervenors,)	
)	
v.)	
)	
INTERNATIONAL PROFIT ASSOCIATES,)	
INC.,)	
)	
Defendant.)	

**FINAL REPORT TO THE PARTIES AND THE COURT
PURSUANT TO PARAGRAPH 40 OF THE CONSENT DECREE**

I. INTRODUCTION

We were appointed Co-Monitors pursuant to the Decree entered by the United States District Court for the Northern District of Illinois on March 2, 2011. Paragraphs 39 and 40 of the Decree provided:

39. Within one (1) year after their appointment, the Decree Monitors shall complete their own review and evaluation of all current employment policies and practices that are related to the Statement of Intolerance of Sexual Harassment, and shall submit a written report (which shall be a public report) to EEOC, IPA¹ and the Court setting forth the following information:

¹ International Profit Associates (IPA) changed its name to International Services, Inc. (“ISI”) after the Decree was entered, and will be called “ISI” in this Report.

- A. an assessment of whether IPA maintains or has successfully implemented each specific policy and practice ordered in paragraph 50 below;
- B. for each policy, procedure or practice outlined in paragraph 50 below that has not been maintained or successfully implemented, a statement discussing the reason for IPA's failure to maintain or implement such policy, procedure or practice;
- C. an evaluation of the impact of any specific changes made pursuant to this Decree;
- D. an assessment of the effectiveness of IPA's policies and practices for achievement of IPA's Statement of Intolerance of Sexual Harassment;
- E. recommendations for any changes to existing practices or programs that the Decree Monitors deem necessary or appropriate for achieving IPA's statement of Intolerance of Sexual Harassment and the terms of this Decree; and
- F. timetables for implementation and completion of compliance with any of their recommendations, subject to the terms of this Decree.

40. Thereafter, for the duration of the Decree, the Decree Monitors will be responsible for continuing the review and evaluation of all ongoing employment policies and practices of the Company relating to IPA's Statement of Intolerance of Sexual Harassment and the terms of this Decree, as well as monitoring the impact and effectiveness of their recommendations. The Decree Monitors will continue during this time to recommend revisions or modifications to ongoing employment policies and practices in order to achieve the Statement of Intolerance of Sexual Harassment and the terms of this Decree. At the end of each successive year, the Decree Monitors shall submit an annual public report to EEOC, IPA and the Court setting forth the information described in paragraph 39 herein.

We submitted our second report (the "Two Year Report") pursuant to paragraph 40 on March 4, 2013. The present report is the final report required by paragraph 40 at the end of our third year of work.

We have continued our comprehensive activities on this assignment during the past year. We have had extensive telephone and email contact with ISI's Executive Director of Human

Resources, Jon Andes, who is the principal ISI official charged with responsibility for dealing with us and assuring compliance with the Decree, and we have met with other top Company officials. We have continued our extensive involvement in the training activities we will describe herein. We have been involved in review of ISI's processing of the eight internal complaints (and one external complaint) of sexual or sex-based harassment or retaliation that have been filed since the last Report. With the assistance of a third interviewer, we conducted confidential interviews of 80 of the 408 employees at the Buffalo Grove headquarters during December 16, 17, and 18, 2013 and have tabulated and analyzed the results.

Each of our two previous reports has had occasion to note the work of the Executive Director, Human Resources, not only in making this Decree work as intended but in making steady progress in professionalizing the Human Resources function at ISI. By all accounts, including the unanimous views (as expressed to us in interviews) of long-time employees, the Company today is a different and far better workplace than it was when he was hired three years ago. The credit for making this Decree work as intended is largely due to his efforts and to his superiors who supported him along the way.

II. COMPANY RESPONSES TO MONITORS' RECOMMENDATIONS IN TWO-YEAR REPORT

The Year Two Report made a series of recommendations, which under the Decree required a formal response from the Company. All were responded to in writing as required by the Decree and all have been acted upon, sometimes by issuing supplemental communications to employees or managers strengthening existing policies or imposing new requirements.

Recommendation: *We recommend that next year the Company make certain to have the necessary technological support to prevent the flaws that were encountered this year [in the "Webinars" that were used to satisfy certain training obligations of the Decree]. (See Year Two Report, pp. 13-14.)*

The Company acknowledged the technical difficulties caused during the Year Two

webinars, which had been caused by the use of an in-house system. It solved these problems by reverting to the original software supplied by its outside vendor for the webinars during the first year.

Recommendation: We recommend that the refresher training required by the Decree during the coming 12 months be 90 minutes in length. (See Year Two Report, p. 14.)

The Company accepted and implemented this recommendation. We discuss the refresher training in detail later in this report.

Recommendation: We recommend that the Company provide us, within thirty days, with a formal plan for increasing the monitoring of compliance with the Dress Code in the BC area, for increasing the level of discipline for first-time and multiple violations, and for holding all managers accountable. (See Year Two Report, pp. 16-17.)

Mr. Andes issued a memorandum on April 15, 2013 to all BC Department Employees stressing the importance of the Dress Code Policy and specifying the levels of discipline that would be employed for first violations, second violations, and continuing violations. The memorandum also tried a “carrot and stick” approach by offering edible treats to zones that avoided dress code violations in their work area during a given quarter as well as modest bonuses to the zone managers. Mr. Andes also met with supervisors and informed them that the owner of the Company, John Burgess, had authorized him to start assessing monetary fines on all zone managers and assistant zone managers who failed to insure that their supervisees were dressed appropriately. Thereafter, Mr. Andes reported on a quarterly basis to the monitors on compliance with the Dress Code.

The initial response under the Dress Code Policy is a verbal warning with second violations within the same calendar year resulting in being sent home. This is an effective tool, since BCs cannot make commissions if they are not at work, and as the year progressed, this measure was increasingly used. The number of warnings issued for first violations increased during the second quarter of 2013 and decreased only slightly in the third quarter. The number

of people sent home increased steadily through the third quarter. However, in the final quarter of 2013, only two first warnings had to be given for a violation and just three employees had to be sent home for arriving inappropriately dressed. One particular zone and zone management team were rewarded during three consecutive quarters for no violations. No other zone ever achieved a violation-free quarter. Notwithstanding progress, we still heard complaints in interviews about inconsistent enforcement of the Dress Code, as discussed below.

Recommendation: *We recommend that within 30 days the Company provide us with a formal plan to address [the issue of taking appropriate and consistent action in response to inappropriate language and public conduct by supervisors in the Business Consultant area], including proposed measures as to what actions will be taken if it persists. (See Year Two Report, p. 18.)*

The Company accepted this recommendation. The same memorandum of April 15, 2013 discussed above that dealt with the Dress Code also dealt with “Curbing Offensive Language and Conduct: Policy and Procedures.” Addressed to all BC employees, it reported the fact that there had been numerous complaints from many sources, including employees, feedback from the monitors, and the monitor reports, about offensive language and conduct in the BC department, and put both nonmanagerial and managerial employees on notice that there would be disciplinary action taken in response to any incident reported to Human Resources that proved valid on investigation. We will discuss the remaining problems in this area later in this report.

III. PROCESSING OF INTERNAL COMPLAINTS OF SEXUAL HARASSMENT

The Decree requires, and the ISI sexual harassment prevention policy specifies, an internal complaint procedure and also advises persons they may file charges of discrimination with government agencies, including the EEOC.

During the third year of the Decree, eight complaints of sexual or sex-based harassment were filed pursuant to the Company’s internal procedure and generated investigations by Human

Resources.² Thus, the number of internal complaints was approximately the same in the last year as it was in 2012. The Executive Director, Human Resources handled all these investigations. As in the past, he provided us with his notes of interviews and his report discussing his conclusions and final disposition. His investigatory technique has been acceptable; we have occasionally made suggestions for following up particular areas. We have continued our previous approach of respecting the final judgment as to the course of action taken once we were consulted and had the opportunity to have input with regard to further investigation or discussion that we felt was necessary.

Significant discipline has resulted from these eight internal investigations, including three terminations, two suspensions, one demotion from the management track, one “last chance agreement,” numerous verbal or written warnings, and occasional counseling of employees who were not judged to merit discipline but who could have handled the situation better. To date, none of the complainants in the eight complaints has exercised her right under the Decree to appeal to the Monitors from the Company’s disposition of her complaint.

As in the previous year, fewer than 10% of employees interviewed had had any involvement with Human Resources in connection with an investigation of sexual harassment or related retaliation. Still, Human Resources enjoys a remarkable degree of confidence among Buffalo Grove employees. In our interviews, employees at all levels and from all parts of the Buffalo Grove headquarters praised Mr. Andes’ performance and gave him credit for drastic improvements in the workplace environment. Such popularity of a human resources official is

² In addition, one EEOC charge alleging sex discrimination was filed by a woman who alleged she was removed from a consulting assignment because of being female and then was assigned less work thereafter than men were. The Company settled this charge in EEOC mediation and issued a written warning to a project lead employee who had been involved in the reassignment. This allegation arguably did not involve “sexual harassment” or “sex-based harassment” within the meaning of the Decree, but was brought to our attention anyway by Mr. Andes, and we have no criticism of how the Company handled or resolved it.

unusual in any company, and sheds light on how much the Company's workplace was in need of improvement at the time the Decree was signed and Mr. Andes was hired. He was given particular recognition for maintaining a high and visible profile, being welcoming, understanding, easy to talk to, helpful and fair in resolving issues expeditiously. Similarly, the Human Resources Department was described by interviewees as proactive with clear standards, policies and procedures to follow, highly professional, accessible, responsive and markedly changed for the best.

IV. TRAINING ON THE COMPANY'S SEXUAL HARASSMENT POLICY

Our Year Two Report discussed the second round of training that the Company carried out pursuant to Paragraph 50(C)(6) of the Decree, which provides for mandatory annual refresher sexual harassment training to all employees, including all officers, managers, and supervisors (including senior managers), and mandatory sexual harassment training to all new employees during employee orientation. This training continued during the past year. It continued to be conducted by Seyfarth Shaw At Work (SSAW), who as in past years delivered exemplary training. As in previous years, most of the Monitors' work with respect to training was performed by Nancy Kreiter.

The refresher training sessions over the past year can be divided into three groups: (1) live on-site training in the fall of 2013 at Buffalo Grove, with each manager attending one of three 1.5 hour sessions conducted by Megan Simpson of SSAW (an outstanding trainer), and each nonmanager attending one of thirteen 1.5-hour sessions, again conducted by Ms. Simpson; (2) live offsite training conducted in January 2014 in connection with the Annual Meeting for managerial and nonmanagerial field employees throughout the country and the few managers who had missed the onsite training the previous fall, conducted by five trainers from SSAW who

delivered one manager session and seven nonmanager sessions; and (3) five on-line live “Webinars” conducted in February 2014 by Megan Simpson for field employees who did not attend the Annual Meeting. Ms. Kreiter participated in a dry run for the Buffalo Grove training on August 8, 2013, attended all three of the Buffalo Grove managerial training sessions and 11 of the Buffalo Grove nonmanagerial sessions, attended and observed portions of all eight of the field training sessions at the Annual Meeting, and observed the recent Webinars.

The manager training at Buffalo Grove went well. Of 84 managers who participated in the past year, only two were new to the training. The difference in participation levels and enthusiasm was noticeable compared to previous years. Evaluations of the training by the participating managers were excellent. Results of nonmanagerial training were also excellent. The majority of employees had been through sexual harassment training under the Decree before, sometimes twice. (Turnover among nonmanagerial employees is high, so for some of them the training was new.) Participation was active and the employees generally took the sessions seriously. In our interviews, an overwhelming percentage of employees praised the training, said it had been useful, and hoped that some form of it would continue in the future.

As in past years, observing the training, which is highly interactive and hence elicits much spontaneous commentary from participants, provided a useful source of information about how employees view the workplace at the Company. As in the past, nonmanagerial employees spoke up in training sessions about what they perceive as a double standard for managers with regard to maintaining respectful behavior, avoiding foul language, and yelling. Such complaints reinforce the impression we have, discussed below, that the Company has not fully solved this problem despite the policy (discussed above) imposing fines on such conduct.

The field training held in January in connection with the Annual Meeting went exceedingly well with some troublesome exceptions. The evaluations of the sessions were

excellent. Three of the sessions observed by Ms. Kreiter went very well, but four others were marred by poor behavior from a handful of attendees, including one Director. Several employees kept up this conduct throughout one of the sessions even after being admonished by Mr. Andes. One employee arrived apparently intoxicated. The Company took action in response to this misconduct, issuing warning notices to five employees and putting a sixth who had previously been disciplined for another infraction on a last chance agreement. The number of attendees involved in these incidents was minimal, but the fact that it occurred at all, by employees who knew that Ms. Kreiter and Mr. Andes were monitoring the sessions, should be sufficient to convince the Company that even after three years of training and close monitoring, not everyone has gotten the message.

The Webinar training for field employees consisted of six sessions scheduled over two Saturdays plus one weeknight makeup class. Ms. Kreiter observed them all. There were a few technical glitches but nothing on the order of last year's problems, and they were quickly taken care of. The first session had serious attendance issues, resulting in confirmation calls being made to every expected participant. The end result was 100% attendance. Ms. Simpson did an exemplary job in these Webinars, and the design, content, pace, and interactive participation were all excellent.

The training performed under the Decree has plainly had a huge impact on the work environment at the Company. The overwhelming majority of interviewed employees, most of whom had participated in the training during at least two and sometimes all three years of the Decree, reported they found the training useful and that it had had a positive impact on the work environment. Some 77% of interviewees, including 72% of female interviewees, reported that the work environment had changed for the better since the training began. Numerous interviewees commented that the quality of the training had improved over previous years.

Nearly 85% of interviewed employees also favored continuation of this training in some form. Some employees commented that the training hadn't taught them anything they didn't already know, but even these employees tended to favor continuation of the training.

We strongly recommend that once the Decree ends, the Company continue specific training in the subject of sexual harassment. We understand that such training is expensive, but in our view, it would be a huge mistake not to continue training. First, to put matters bluntly, a company like this one, which depends on an aggressive telemarketing sales model, is always in danger of backsliding into the unprofessional and profane environment that characterized the BC floor only a few years ago. Second, the behavior that produced that environment extended into the reaches of management, and as discussed below, such behavior at the managerial level has not been totally eradicated, although it has been enormously reduced. Third, there is and will always be very high turnover at the Company, particularly among BCs, whose job forms the heart of the Company's business model, so as time goes by, an increasing percentage of employees have never had sexual harassment prevention training. The Company has already committed to working with SSAW to develop a revised New Hire Orientation training program covering sexual harassment. Finally, the last year of webinar training for field employees underscored the need to hold field personnel, whether relatively new or long-term, to the same high standards of conduct as those in the Buffalo Grove headquarters office. Moreover, several reported incidents involving inappropriate behavior emanated from the field operation in the past year. Although the Buffalo Grove environment has dramatically changed over the past three years, the Company cannot afford to allow the field to become a liability.

V. ASSESSMENT OF THE CURRENT SITUATION WITH RESPECT TO CONTROL OF SEXUAL HARASSMENT

Our Two Year Report stated that all objective evidence suggested that conduct

traditionally viewed as sexual harassment within the Company was low, and that “the current challenge to the Company is to better control situations that do not involve overt sexual harassment but which violate the Company’s view of acceptable workplace conduct and that contribute to views of employees, especially women employees, that problems still exist.” We have not changed that view in light of the evidence we have about the final year of the Decree.

As discussed above, the number of complaints of sexual harassment or related retaliation stayed approximately the same in Year Three compared to Year Two. In about half the cases these complaints led to the Company taking serious disciplinary action, including three terminations. No employer of any size who maintains an effective sexual harassment prevention policy expects to eliminate such complaints totally, and we do not mean to imply that this number in itself indicates a serious institutional problem with sexual harassment. It does mean that the Company has no cause for complacency.

Our 2013 interviews, like our 2012 interviews, made clear that the huge majority of employees at Buffalo Grove do not see sexual or sex-based harassment as a significant problem. Asked to state, on a scale of 0 to 5, how much of a problem sexual harassment is in the Company today (0 being no problem 5 being the most severe), 68% percent answered “zero,” another 22% answered “1”, and no one answered more than 3. There was no significant variance between men and women in these answers. It should be noted, however, that Market Specialists (BCs) were somewhat less sanguine. Only 48% of Market Specialists answered “0”, compared to 77% of all others. This is one among many pieces of evidence suggesting that any remaining problems at the Company tend to be concentrated on the BC floor.

Similarly, 92% of all interviewees reported they were unaware of any current sexual harassment at the Company. Again, there is not a significant difference between men and women in answering this question. Market Specialists were slightly more likely to answer that they *were*

aware of such harassment, but even in this case, 87% said that they were not. Comments from interviewees make clear that what they describe as “sexual harassment” is usually the use of profanity or obscenity (although the formal complaints that Mr. Andes investigated last year sometimes had much more serious conduct underlying them). Two female interviewees (out of 42) claimed to have experienced sexual harassment themselves during the past year, both consisting of inappropriate comments from men. The percentages of interviewees reporting that they had seen others being sexually harassed during the past year were similar (5% of women and 3% of men, compared to 9% and 3%, respectively, one year ago). Asked whether sexual harassment over the past three years has decreased, increased, or remained the same, 47% said it had decreased, while 37% said it had never been a problem during that period and had hence stayed the same. Only one person said it had increased.

As with last year, a huge majority of interviewees agreed that the Company has made significant progress during the life of the Decree in controlling sexual harassment. 88% of all interviewees agreed that the Consent Decree had been helpful or somewhat helpful in this respect; only 3% felt it had not been. This question elicited many comments from employees who had been at the Company since pre-Decree days. One BC female reported that things had been “just awful” during her earlier stint with the Company and that now they were far better. Even employees who were skeptical about the merit of the EEOC’s lawsuit agreed that the work environment was far preferable today.

Similar to last year, awareness of and appreciation of the Company’s efforts to control harassment were high among our interviewees. 100% of the interviewees had been through the sexual harassment prevention training. 93% of them found that the training had had a positive or somewhat positive result on the workplace; only three interviewees (4%) said it had not. Most interviewees, including 95% of the women, felt their supervisor was effective at least to some

degree in keeping the workplace environment free from harassment – figures similar to those we reported last year. 90% of interviewees rated their supervisors' professionalism to be acceptable or better, and 78% of them, up from 40% one year ago, reported that the level of supervisor professionalism had improved since the entry of the Decree (another 15%, down from 50% one year ago, said it had stayed the same).

The Two Year Report included discussion of two areas that are still potential sources of trouble for the Company. The first involves dress code violations, particularly in the BC area. Human Resources has devoted substantial attention to the dress code over the past year, and some of those efforts are described earlier in this report. 45% of the supervisors we interviewed claim to have had occasion to enforce the dress code against their supervisees. But it is not clear that these efforts have solved the problem, at least in the eyes of employees. 28% of our interviewees this year stated that the dress code is not enforced consistently. Complaints are still heard that high-producing BCs can get away with wearing clothing that would lead to others being sent home. Some women express resentment that they are picked on while men can wear anything they want.

The Company is trying, and most interviewees agree that the level of inappropriate dress has been declining over time. The kinds of issues that arise now are relatively minor, and this will never be an easy area in which to achieve consistency. There is no general agreement on what level of scantiness is appropriate dress for women. A company that is too zealous in enforcing a dress code risks making itself look ridiculous in the eyes of employees. Our impression is that female managers find it easier to enforce the dress code against female employees than male managers do, for understandable reasons. Some employers give up in the face of these difficulties. But given its recent history, ISI cannot afford to give up. It needs to settle on standards of what is acceptable and then enforce those standards against everyone,

including big “producers.” The Company has already stepped up its enforcement efforts since we briefed it on our impressions from the interviews, resulting in more first-time warnings and people sent home. Jon Andes is now walking the BC floor once in the morning and right after lunch when the second shift arrives. Two other managers are also strolling the BC area regularly and the zone and assistant zone managers have been directed to identify violators and send them to HR or the Assistant BC Director. ISI also recognizes that dress code violations will increase during the warm weather months.

The second problem we reported on last year was continued use of foul language, particularly on the BC floor and among some managers. We noted: “A sizeable minority of our interviewees continues to view the Company as a profane workplace environment, although most say that this problem has been decreasing. This is not strictly a sexual harassment or related retaliation problem, but many employees perceive it as such. The most serious aspect of it is that there are still episodes of managers losing their tempers and cursing out employees on the BC floor in full hearing of their coworkers.”

In our interviews this year, 79% of those interviewed reported a decrease in the use of profanity compared to 64% who did so one year ago. However, employees still cite a considerable amount of swearing and yelling by managers, particularly, but not only on the BC floor. The Company recently took steps in regard to this problem, issuing warnings (and in one case a last chance agreement) to the three particular managers – all long-serving and high-ranking – about whom complaints of abusive behavior in public were the most frequent. This clearly was not an easy step for the Company’s owners to take, since they feel intense loyalty to the managers in question, but they did take it, admittedly under considerable pressure from us. The Company has committed to developing a training module for managers on motivating employees in a positive manner – by verbal and written communications- without swearing,

yelling, and/or a demeaning attitude. Whether those concrete steps will solve the problem in the long run, particularly after the Decree ends and monitoring ceases, remains to be seen. But our impression is that if the Company controls this behavior among its managers, it will find it increasingly easy to enforce standards among non-supervisory employees.

VI. CONCLUSION

It is appropriate now that the Decree is ending to look broadly at the Company's performance under it. We have extensive experience with other companies who signed decrees very similar to this one. The response of such companies to their obligations under such decrees has ranged from embracing to grudging. From our viewpoint, ISI's response has been outstanding. When the Decree was signed, the Company lacked a human resources infrastructure, had never done really effective training in sexual harassment, continued to employ large numbers of managers and non-managers against whom serious accusations of sexual harassment had been leveled, and had a \$8 million monetary obligation facing it as the result of the Decree. Today, after three years of progress driven by the remarkable efforts of its Executive Director of Human Resources with the support of John and Tyler Burgess, there is all but universal agreement of the Company's employees that it is a different and far better place to work. Violations of the Company's sexual harassment policy still occur, but they are dealt with immediately and with appropriate severity. The work force is now thoroughly trained in that policy, and appreciates it. Unacceptable conduct by managers that set a poor example for the rest of the work force has been greatly reduced. ISI has complied fully with the Decree.

We caution that continued vigilance is imperative. ISI has demonstrated how much difference can be made by a single skilled director of Human Resources who has the support of the company's owners. This is not a big company and the procedures that have been put in place over the last three years could prove fragile. The pressures inherent in an aggressive sales

environment that encourage misbehavior and sexual harassment in the absence of adequate controls will never disappear. To keep in place the progress that has been made at ISI will require the Company's top management to continue with ongoing training of its work force and with maintaining its present system of prompt investigation and punishment of infractions – and to continue spending the money necessary to make those things happen. In fact, when interviewees were asked, "If you were running ISI, what steps, if any, would you take to limit sexual harassment and/or improve the handling of complaints?" there were four overwhelming responses; stay the course, keep Jon Andes, continue training, stop the profanity and enforce the dress code.

/s/ Nancy B. Kreiter
Nancy B. Kreiter

/s/ George F. Galland, Jr.
George F. Galland, Jr.

Date: March 10, 2014

CERTIFICATE OF SERVICE

Lisa Mecca Davis certifies that she caused a copy of the foregoing Report to be served upon all counsel of record, by this Court's electronic-filing system, this tenth day of March, 2014.

/s/ Lisa Mecca Davis

Lisa Mecca Davis