

JAN 02 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

R. Sherman March
CLERK

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

STERLING BROTHERS
CONSTRUCTION, INC.,

Defendant.

CIV 01-0732 WJ/RLP(ACE)

CONSENT DECREE

The United States Equal Employment Opportunity Commission (the "Commission" or "EEOC") filed this action against Sterling Brothers Construction, Inc. ("Defendant") of Aztec, New Mexico to enforce Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e et seq. (Title VII). The Commission alleges that the Defendant subjected Deena M. Kleinegger to sexual harassment in violation of Title VII. Defendant denied and continues to deny all allegations of sexual harassment and all allegations set forth in the EEOC's Complaint.

This Decree does not constitute an admission of liability by the Defendant, nor an adjudication on the merits of the allegations in the complaint. The parties do not object to the jurisdiction of the Court over this action and waive their rights to a jury trial.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. This Decree resolves all claims of the Commission and Deena M. Kleinegger brought against the Defendant, including the Commission's and Ms. Kleinegger's claims for monetary damages and injunctive relief.

INJUNCTION

2. While there is no factual finding in this case on the violations alleged and Defendant has contested liability, the Defendant, its officers, agents, employees, successors, assigns and all persons in active concert or participation with it, are enjoined for the duration of the Decree from discriminating against any employee based on his or her sex, including sexual harassment, and from retaliating against any employee who: (a) opposes practices made unlawful by Title VII or a state equal employment statute, (b) makes a charge of discrimination or assists or participates in an investigation or proceeding under Title VII or a state equal employment statute, or (c) files an internal complaint of discrimination. This injunction will remain in effect for the duration of the Decree at any facility operated by the Defendant and any of its successors.

CONSIDERATION TO DEENA M. KLEINEGGER

3. In accordance with this Decree and with her signed Settlement Agreement and Release, Deena M. Kleinegger shall receive twenty thousand dollars (\$20,000.00) consideration from Sterling Brothers Construction, Inc. in exchange for a full and complete settlement of all claims against the Defendant arising out of the facts and issues included in this lawsuit. Additionally, Defendant agrees to forgive the sum of two thousand four hundred fifty two dollars (\$2,452.00) owed by Ms. Kleinegger to Defendant.

4. The Defendant shall pay the \$20,000.00 consideration amount via business check within five (5) days of entry of this Decree.

5. The check provided for in paragraph 4 of this decree shall be made payable to Deena M. Kleinegger and shall be mailed directly via certified mail to Ms. Kleinegger at the address provided by the EEOC. Within five days of issuance of the check, the Defendant shall submit a copy of the check and related correspondence to the Regional Attorney, Equal Employment Opportunity Commission, Albuquerque District Office, 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102.

6. The Defendant shall expunge from the personnel files of Deena M. Kleinegger all references, if any, to the charge of discrimination filed against Defendant by Ms. Kleinegger.

7. In response to any employment inquiries or reference checks concerning Deena M. Kleinegger, the Defendant shall provide only Ms. Kleinegger's dates of employment, position held, job duties and starting and ending salary. This provision shall remain in force for so long as Ms. Kleinegger uses the Defendant as a reference and is not limited to the two years of this Decree.

8. The Defendant shall not take any action against Deena M. Kleinegger or retaliate against any witness in this case for filing a charge of employment discrimination or for participating, assisting or testifying in this action.

DEFENDANT'S POLICIES AND PRACTICES

9. The Defendant shall carry out policies and practices that promote a work environment free from sex discrimination, including sexual harassment of its employees, and that allow employees to raise concerns or complaints without retaliation about matters made unlawful by Title VII, whether alleged, perceived or actual. Defendant shall designate in its policy the option for employees who have complaints of discrimination of making their complaints to a third party not affiliated with the Defendant. For the duration of this Decree, Defendant shall distribute a copy of its sexual harassment policy to each of its current full and part-time employees, and to each new employee hired with an expectation of working ninety (90) or more days.

TRAINING AND COUNSELING

10. The Defendant shall provide training on sex discrimination and harassment according to the following terms:

- A. The Defendant shall retain and pay for a consultant/lecturer to provide consultation and training for one seminar-training session each year this Decree is in effect. Defendant intends to solicit the New Mexico Human Rights Commission to provide this training. All owners, supervisors and employees of the Defendant shall attend

the seminar-training sessions. Duplicative sessions may be held to accommodate staffing needs. The Defendant shall be responsible for any additional costs to provide such duplicative sessions which may be provided by videotape.

- B. The first seminar-training session shall be conducted within three (3) months of the entry of this Decree. The second training session shall take place on or about the first anniversary of the initial training session.
- C. The consultant/lecturer shall be a person(s) acceptable to the Commission. The Commission has indicated that training through the New Mexico Human Rights Commission is acceptable. The Defendant shall submit the name(s), address(es), telephone number(s), and resume(s) of the proposed consultant/lecturer(s) together with the dates of the proposed seminar-training sessions and the details of the contents of the training to the Regional Attorney of the Albuquerque District Office of the Equal Employment Opportunity Commission within sixty days of the entry of this Decree. The Commission shall have twenty days from the date of receipt of the information described above to accept or reject the proposed consultant/lecturer and/or the contents of the training.
- D. The seminar-training sessions shall be the standard (in length and content) training session offered by the New Mexico Human Rights Commission regarding harassment and sexual harassment issues. All personnel, designated in Paragraph A shall both register and attend the seminar-training session. The registry of attendance shall be retained by the Defendant for the duration of the Decree.
- E. The training shall include the subject of what constitutes sex discrimination, including sexual harassment, harassment based on gender, and retaliation; that sex discrimination in the hiring, firing, compensation, assignment or other terms, conditions or privileges of employment and retaliation violates Title VII; how to

prevent sex discrimination and retaliation, how to provide a work environment free from sex discrimination, sexual harassment and retaliation, and to whom and by what means employees may complain if they feel they have been subjected to sex discrimination, sexual harassment and retaliation in the workplace.

- F. For the duration of this Decree, at or around the time of their hire, new employees hired with an expectation of working ninety (90) or more days shall attend any seminar-training sessions; employees hired after the seminar-training sessions are presented shall view a video tape of the training and/or a professional training tape which covers the topics set forth in 10.E. and shall be given any written material disseminated at the seminar-training sessions.

11. The Commission, at its discretion, may designate Commission representatives to attend and fully participate in the seminar-training sessions described above.

12. The Defendant shall post within thirty (30) days of the entry of this Decree, for a period of twenty-four (24) months in a prominent place frequented by its employees, the Notice attached to this Decree as Exhibit A. This Notice shall be the same type, style and size as in Exhibit A.

REPORTING BY DEFENDANT AND ACCESS BY EEOC

13. The Defendant shall report in writing and in affidavit form to the Regional Attorney of the Commission's Albuquerque District Office at 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102, beginning six months from the date of the entry of this Decree, and thereafter every six months for the duration of the Decree the following information:

- A. Any changes, modifications, revocations, or revisions to its policies and procedures which concern or affect the subject of sex discrimination.
- B. The registries of persons attending each of the seminar-training sessions required in paragraph 10 of this Decree and a list of current employees on the day of the seminar-

training session.

- C. An affidavit stating that the Notice required in paragraph 12 of this Decree was posted and the locations where it was posted.

14. The Commission, upon reasonable notice, shall have the right to enter and inspect the Defendant's facilities to ensure compliance with this Decree and federal anti-discrimination laws.

COSTS AND DURATION

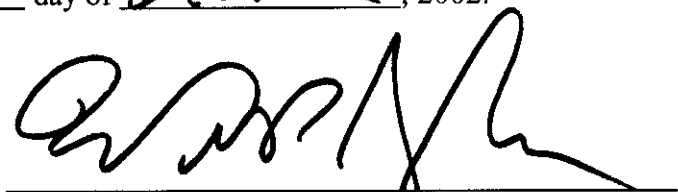
15. Each party shall bear its costs and attorney's fees incurred as a result of this action through the filing of this Decree.

16. The duration of this Decree shall be two (2) years from its entry. This Court shall retain jurisdiction of this action for the duration of the Decree, during which the Commission may petition this Court for compliance with this Decree. Should the Court determine that Defendant has not complied with this Decree, appropriate relief, including extension of this Decree for such period as may be necessary to remedy its non-compliance, may be ordered.

17. This Decree shall expire by its own terms at the end of two (2) years after entry, without further action by the parties.

18. The parties agree to entry of this Decree and judgment subject to final approval by the Court.


ENTERED AND ORDERED this 30th day of December, 2002.



THE HONORABLE WILLIAM JOHNSON
UNITED STATES DISTRICT JUDGE

APPROVED AND CONSENTED TO:

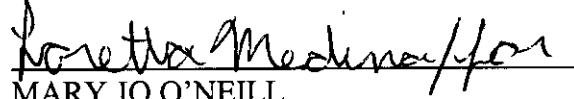
GILKEY & STEPHENSON, P.A.



Barbara G. Stephenson
Carol L. Dominguez
500 Marquette N.W., Suite 505
Albuquerque, NM 87102
(505) 242-4466
(505) 242-3145 (fax)
Attorneys for Defendant

GWENDOLYN Y. REAMS
Acting Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION


1801 L Street, N.W.
Washington, D.C. 20507


MARY JO O'NEILL
Regional Attorney


C. EMANUEL SMITH
Supervisory Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

3300 N. Central Ave.
Suite 690
Phoenix, Arizona 85012


VERONICA A. MOLINA
Trial Attorney

LORETTA MEDINA
Senior Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

Albuquerque District Office
505 Marquette N.W., Suite 900
Albuquerque, New Mexico 87102
Telephone : (505) 248-5231

Attorneys for Plaintiff

NOTICE TO ALL EMPLOYEES

It is unlawful under the federal law (Title VII of the Civil Rights Act) and state law to discriminate against an employee on the basis of sex in hiring, firing, compensation or other terms, and conditions or privileges of employment, including sexual harassment.

An employer shall not discriminate on the basis of sex and shall not retaliate against any employee who opposes a practice made unlawful under federal law, files, assists or participates in the filing of a charge of discrimination or participates in any investigation under Title VII, or who files a grievance alleging discrimination.

The term "sexual harassment" includes: A) any unwelcome sexual advance; B) requests for sexual favors; C) conduct that demeans or intimates an employee or group of employees because of their gender, including jokes, name calling, labels, or stories; and D) other verbal or physical conduct of a sexual nature if either:

- (1) Submission to such conduct is made explicitly or implicitly a term or condition of employment—i.e., your employment depends on "going along" with harassing conduct, or "giving in" to sexual demands;

OR,

- (2) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile, or offensive work environment.

If you believe you have been discriminated against by an employer, you have the right to seek assistance from and file a charge of discrimination with the:

U.S. Equal Employment Opportunity Commission (EEOC), 505 Marquette, Suite 900,
Albuquerque, New Mexico 87102, (505) 248-5201 or 1-800-669-4000; or

The New Mexico Department of Labor, Human Rights Division (NMHRD), 1596 Pacheco
St., Suite 103, Santa Fe, New Mexico 87505, (505) 827-6838.

YOU HAVE THE RIGHT TO FILE A CHARGE WITH THE EEOC OR THE NMHRD IF YOU BELIEVE YOU ARE BEING DISCRIMINATED AGAINST.

Federal law requires that no action may be taken against you by an employer for (1) opposing discriminatory practices made unlawful by federal law; (2) filing a charge or assisting or participating in the filing of a charge of discrimination; or (3) assisting or participating in an investigation or proceeding brought under Title VII. Should any such retaliatory actions be taken against you, you should immediately contact the EEOC or the NMHRD listed above.

EXHIBIT A