

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 02-4091(WHW)
v.	)	
	)	
SPYLEN OF DENVILLE, INC., d/b/a WENDY'S	)	
	)	
Defendant.	)	

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**CONSENT DECREE**

**INTRODUCTION**

A. On August 21, 2002, the Equal Employment Opportunity Commission ("the EEOC") brought this lawsuit on behalf of Thomas Sillito against Spylen of Denville, Inc., d/b/a Wendy's ("Defendant" or "Spylen"). The EEOC alleged that Defendant violated the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §12101, *et seq.*, when it subjected Mr. Sillito to offensive and unwelcome harassment based on his disability, Down's Syndrome, and failed to take any effective remedial measures to stop the unwelcome verbal and physical abuse. The EEOC further contends that due to the alleged harassment, Thomas Sillito was constructively discharged effective April 27, 2001.

B. This Consent Decree is entered into by the EEOC and Defendant, Spylen. This Consent Decree shall be final and binding between the EEOC and Defendant, Spylen, its directors, officers, agents, employees, successors or assigns and all persons in active concert or participation with it, (hereinafter collectively referred to as "Defendant" or "Spylen").

C. The EEOC and Defendant, Spylen, do hereby agree to the entry of this Consent Decree, which shall fully and finally resolve all claims which were raised by the EEOC in its Complaint in Civil Action No. 02-4091. This Consent Decree shall not constitute an adjudication of or finding on the merits of the case and shall not be construed as an admission by Defendant of any violation of the ADA.

**CONSENT DECREE**

Upon consent of the parties to this action, it is hereby ORDERED, ADJUDGED, and DECREED that:

**NON-DISCRIMINATION AND NON-RETALIATION**

1. This Court has jurisdiction over the parties and the subject matter of this action.
2. Spycen is enjoined from engaging in any employment practice which constitutes unlawful discrimination under the ADA. Specifically, Defendant Spycen is enjoined from creating, fostering or tolerating a hostile work environment based on disability and from terminating employees on the basis of disability.
3. Spycen is enjoined from engaging in any employment practices which retaliate in any manner against any person, including but not limited to, Thomas Sillito, because of that person's opposition to any practice alleged or believed to be unlawful under the ADA, or because of the filing of a charge, the giving of testimony or assistance, or the participation in any manner in any investigation, hearing or proceeding under the ADA.
4. Spycen shall not divulge, directly or indirectly, to any employer or potential employer of Thomas Sillito, any of the facts or circumstances related to the charge of discrimination against Defendant Spycen, or any of the events relating to Thomas Sillito's participation in the litigation of this matter.
5. Spycen shall comply fully with all provisions of the ADA. Nothing in this Consent Decree, either by inclusion or exclusion, shall be construed to limit the obligations of Defendant, Spycen, under the ADA or the EEOC's authority to process or litigate any charge of discrimination now pending or filed in the future against Spycen.

**MONETARY RELIEF**

6. Within ten (10) days of the entry of this Consent Decree, Defendant Spycen agrees to pay monetary relief in the amount of Ninety Thousand Dollars and Zero Cents (\$90,000.00) to Thomas Sillito, comprised of Two Thousand Dollars and Zero Cents (\$2,000.00), less all lawful deductions, in back wages, Eight Thousand Nine Hundred Fifty-Six Dollars and Thirty-Six Cents (\$8,956.36) in attorneys fees, and Seventy-Nine Thousand, Forty-Three Dollars and Sixty-Four

Cents (\$79,043.64) in compensatory damages, in full settlement of the claims against Defendant which were raised in the EEOC's Complaint.

7. Within ten (10) days of the entry of this Consent Decree, Defendant Spyllen shall: (A) mail a check in the amount of Eighty-One Thousand, Forty-Three Dollars and Sixty-Four Cents (\$81,043.64), covering the back wages and compensatory damages awarded above, payable to Philomena Sillito, as Trustee of the Special Needs Trust established for Thomas Sillito. Thomas Sillito shall have no authority or control over any of the monetary relief awarded in this case at any time; and (B) mail a check for the attorneys fees payable to Mr. Sillito's private attorney, Donald D. Vanarelli, Esquire, Law Office of Donald D. Vanarelli, 242 St. Paul Street, Westfield, NJ 07090.

8. Thomas Sillito is a disabled person under the age of 65 years who is a recipient of needs-based governmental benefits such as Medicaid and the like which are based upon the income and resources of the recipient.

9. Under various federal and state laws, the assets of a disabled individual under age 65 held under an irrevocable trust, sometimes known as a special needs trust, created by a parent of such a disabled individual shall not be treated as an available asset so long as such trust provides at its termination for Medicaid to have a first right of recovery for any such benefits paid to or for the benefit of the disabled individual. A special needs trust would allow Mr. Sillito to remain eligible for needs-based governmental benefits critical for his care notwithstanding the monetary relief awarded in this case.

10. Thomas Sillito's parent, Philomena Sillito, has established a special needs trust which shall be funded with the back pay and compensatory damages awarded in this case as described above in Paragraphs 6 and 7, and by Order Approving Funding of a Self-Settled Special Needs Trust entered by this Court.

11. Spyllen will mail a photocopy of the checks to Philomena Sillito, Trustee, and to Donald D. Vanarelli, Esq., to the EEOC, to the attention of Mary M. Tiernan, Senior Trial Attorney, EEOC, 21 South Fifth Street, Suite 400, Philadelphia, PA. 19106-2515, within five days of the mailing of the checks.

**POSTING OF NOTICE**

12. Within ten (10) business days after entry of this Decree, Spylen shall post 8½ inch by 11 inch sized copies of the Notice attached as Exhibit 1 to this Decree on all bulletin boards usually used by Spylen for communicating with employees at its facility in Denville, New Jersey. The Notice shall remain posted for one (1) year from the date of entry of this Decree. Counsel for Spylen shall provide a copy of the Notice, and an indication of the date and location of its posting, to the EEOC's Philadelphia District Office, attention, Mary M. Tierman, Senior Trial Attorney, within ten (10) days of the posting. Spylen shall take all reasonable steps to ensure that the posting is not altered, defaced or covered by any other material. Should the posted copies become defaced, removed, marred, or otherwise illegible, Defendant agrees to immediately post a readable copy in the same manner as heretofore specified.

**TRAINING**

13. Defendant has in place a training program on employees' rights and employees' obligations under the ADA and under the New Jersey Law Against Discrimination. The ADA training emphasizes what constitutes unlawful discrimination based on disability, including, but not limited to, unlawful harassment based on disability, how to keep the company free from such discrimination and what constitutes unlawful retaliation. Defendant's training program will be conducted by Jackson Lewis LLP. Within one hundred eighty (180) days of the entry of the Consent Decree, such training will be provided to all managers and employees at the facility in Denville, New Jersey.

14. Spylen agrees to provide the EEOC with any and all copies of written materials provided to the participants of the training sessions.

15. Spylen shall certify to the EEOC in writing within fifteen (15) business days after the training sessions required by Paragraph 13 above have occurred that the training has taken place and that the required personnel have attended.

**DISPUTE RESOLUTION**

16. In the event that either party to this Decree believes that the other party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party of the

alleged non-compliance within ten (10) days of the alleged non-compliance and shall afford the alleged non-complying party ten (10) business days to remedy the non-compliance or to satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within ten (10) business days, the complaining party may apply to the Court for appropriate relief.

**MISCELLANEOUS PROVISIONS**

17. Each party to this Decree shall bear its own expenses, costs and attorneys' fees.

18. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, officers, assigns, and successors of Spylen in their capacities as representatives, agents, directors and officers of Spylen, and not in their individual capacities. This paragraph shall not be construed as placing any limit on remedies available to the Court in the event that any individual is found to be in contempt for a violation of this Decree.

19. This Consent Decree shall fully and finally resolve all claims which were raised by the EEOC in its Complaint in Civil Action No. 02-4091(WHW)

20. This Consent Decree shall be filed in the United States District Court for the District of New Jersey and shall continue to be in effect for a period of one year. Any application by any party to modify or vacate this Consent Decree during such period shall be made by motion to the Court on no less than thirty (30) days notice to the other party.

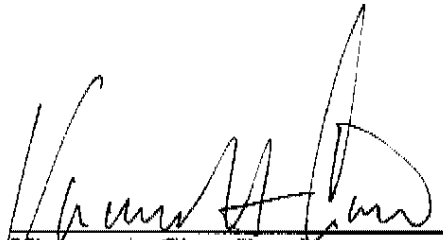
21. The Court retains jurisdiction over this case in order to enforce the terms of the Consent Decree.

22. The Clerk of the District Court is hereby directed to send a file-stamped copy of this Consent Decree to counsel of record.

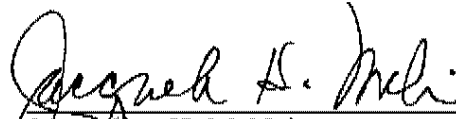
Eric S. Dreiband  
General Counsel

James L. Lee  
Deputy General Counsel

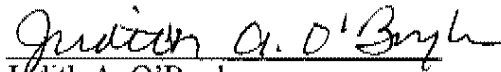
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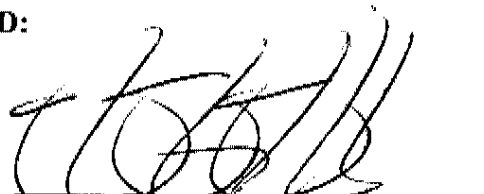
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Supervisory Trial Attorney



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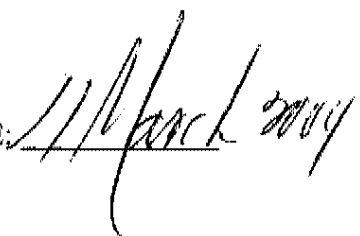
**IT IS SO ORDERED:**

**BY THE COURT:**



WILLIAM H. WALLS  
UNITED STATES DISTRICT JUDGE

DATE:



**EXHIBIT 1**

**NOTICE TO ALL SPYLEN EMPLOYEES**

This Notice is being posted pursuant to a Consent Decree entered by the federal court in EEOC v. Spylen of Denville, Inc., Civil Action Number 02-4091(WHW) (D.N.J.), resolving a lawsuit filed by the Equal Employment Opportunity Commission ("EEOC") against Spylen of Denville, Inc., ("Spylen").

The Americans with Disabilities Act of 1990 ("the ADA") prohibits discrimination against employees and applicants for employment based on disability. The ADA also prohibits retaliation against employees or applicants who avail themselves of the rights under the ADA by engaging in protected activities, such as filing a charge of discrimination and/or testifying or participating in a Commission investigation.

The EEOC is the federal agency which investigates charges of unlawful employment discrimination. The EEOC has the authority to bring lawsuits in federal court to enforce the ADA.


In its lawsuit, the EEOC alleged that Spylen subjected an employee to harassment based on his disability and constructively discharged him in violation of the ADA of the Civil Rights Act of 1964 ("ADA"). Spylen denies these allegations.

To resolve the case, Spylen and the EEOC have entered in to a Consent Decree which provided, among other things, that: (1) Spylen will not discriminate on the basis of disability and will not allow employees to be harassed based on disability; (2) Spylen will not retaliate against any person because he or she opposed any practice made unlawful by the ADA, filed an ADA charge of discrimination, participated in any ADA proceeding, or asserted any rights under the Consent Decree; and (3) Spylen will provide training regarding the ADA.

**If you believe you have been discriminated against, you may contact the EEOC at (973) 645-6383. The EEOC charges no fees and has employees who speak languages other than English.**

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

**This Notice must remain posted for one year from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to the: Regional Attorney, EEOC Philadelphia District Office, 21 South 5th Street, Philadelphia, PA 19106.**

  
\_\_\_\_\_  
U.S. Equal Employment Opportunity  
Commission

  
\_\_\_\_\_  
Spylen of Denville, Inc.

DATED: March 4, 2004

DATED: March 5, 2004