

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

Plaintiff,

v.

SUMMIT SALES COMPANY, INC.

Defendant.

CIVIL ACTION NO.

3:97-CV-2200-~~/~~R

ENTERED ON DOCKET  
PURSUANT  
TO F. R. C. P. RULES  
58 AND 79a

CONSENT DECREE

THIS CONSENT DECREE is made and entered into by and between the Equal Employment Opportunity Commission ("EEOC") and Summit Sales Company, Inc. ("Summit Sales") in the United States District Court for the Northern District of Texas, Dallas Division, with regard to the EEOC's Complaint filed on September 8, 1997 ("Complaint"), in Civil Action No. 3-97CV-2200-R. The Complaint was based upon a charge of discrimination filed by Philip Strull, Charging Party, against Summit Sales.

The above referenced Complaint alleges that Summit Sales violated Section 4(a)(1) of the Age Discrimination in Employment Act of 1967, as amended ("ADEA"), 29 U.S.C. Section 623, by

13

subjecting him to disparate treatment and discharging him from his position of Sales Representative because of his age (67).

The EEOC and Summit Sales agree to compromise and settle the differences embodied in the Complaint, and intend that the terms and conditions of the compromise and settlement be set forth in this Consent Decree ("Consent Decree").

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows, the Court finds appropriate, and therefore, it is ORDERED, ADJUDGED AND DECREED that:

1. By entering into this Consent Decree, Summit Sales admits no violation of the ADEA.

2. This Consent Decree resolves all issues raised in EEOC Charge No. 310-96-2329.

3. Summit Sales agrees that it shall conduct all employment practices in a manner which does not subject any employee to discrimination under the ADEA.

4. Summit Sales agrees that there shall be no discrimination or retaliation of any kind against any person because of opposition to any practice declared unlawful under the ADEA, or because of the filing of a charge; giving testimony or assistance or participating in any manner in any investigation, proceeding or hearing under the ADEA

5. Summit Sales agrees to post the Notice appended hereto as

Attachment "A" on the employee bulletin board at the headquarters office within ten (10) days after the entry of this Consent Decree. Summit Sales will report to the EEOC that it has complied with this requirement within 14 days after posting the notice.

6. For each year that this Consent Decree is in effect, Summit Sales agrees to conduct training for all employees, including supervisors, managers and hourly workers, advising them of the requirements and prohibitions of the ADEA. The training will inform the employees of the complaint procedure for individuals who believe they have experienced discrimination. The training will also advise employees, including supervisors and managers, of the consequences of violating the ADEA. The training shall be at least two hours in duration, and shall be conducted by Emily Tobolowsky. Within 10 days after the training is conducted, Summit Sales, by and through Emily Tobolowsky, will confirm that the requirements of this paragraph have been met.

7. Upon any inquiry regarding the employment of Philip Strull, Summit Sales agrees to limit its response to: the inclusive dates of his employment; his job title when last employed; that he was a good person; and that he was a satisfactory employee.

8. All Summit Sales employees whose duties include providing references to prospective employers shall be informed in writing as to the agreements set forth in paragraph 7, above.

9. Summit Sales agrees to pay monetary relief in the amount of \$15,000.00 to Philip Strull.

10. The payment referenced in paragraph 9, above, shall be made by cashier's check made payable to Philip Strull and dated January 21, 1999. The check shall be sent on January 21, 1999, by certified mail, return receipt requested, to Mr. Strull at 13121 Flagstone, Dallas, TX 75240. In the event that Mr. Strull shall predecease the designated date of payment referenced in this paragraph, the check shall be made payable to the Estate of Philip Strull.

11. Summit Sales agrees to assume a portion of Philip Strull's indebtedness to the Summit Sales 401K Plan by assuming the quarterly repayments owed by Strull to the plan as follows:

On each of the seven (7) dates listed below, Summit Sales shall send by United States mail a check in the amount of \$2,432.75 made payable to Allmerica Financial Life.

July 19, 1998

October 19, 1998

January 19, 1999

April 19, 1999

July 19, 1999

October 19, 1999

January 19, 2000

Each payment shall be mailed to: P.O. Box 8632, Boston, MA

02266-8632. Summit Sales agrees to send a copy of each check concurrently to the EEOC, Attention: Toby Costas, Legal Unit.

12. Summit Sales agrees to report to the EEOC within 14 days after entry of this Consent Decree regarding its compliance with the agreement set forth in paragraph 8, above.

13. All reports to the EEOC required by this Decree shall be sent to Toby Costas, Legal Unit, EEOC, 207 S. Houston, Dallas, Texas 75202.

14. If Summit Sales fails to tender payment or otherwise fails to timely comply with the terms of paragraphs 8, 10 and 11, above, Summit Sales shall:

- a. Pay interest at the rate calculated pursuant to 26 U.S.C. Section 6621(b) on any untimely or unpaid amounts; and
- b. Bear any additional costs incurred by the EEOC caused by the non-compliance or delay of the defendant.

15. Neither the EEOC nor Summit Sales shall contest the validity of this Consent Decree nor the jurisdiction of the federal district court to enforce this Consent Decree and its terms or the right of either party to the Consent Decree to bring an enforcement action upon breach of any term of this Consent Decree by either such party. Nothing in this Decree shall be construed to preclude the EEOC from enforcing this Decree in the event that Summit Sales fails to perform the promises and representations contained herein. The EEOC and Summit Sales shall determine whether Summit Sales has

complied with the terms of this Consent Decree and shall be authorized to seek compliance with the Consent Decree through civil action in the United States District Court. The EEOC also reserves the right to seek contempt sanctions for non-payment and non-compliance with this Court Order.

16. The parties to this Consent Decree agree to bear their own costs associated with the above-referenced Complaint.

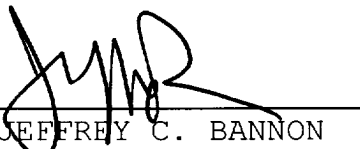
17. The term of this Decree shall be for 30 days subsequent to the last payment required under paragraph 11, above.

SO ORDERED, ADJUDGED AND DECREED this 18<sup>th</sup> day of  
May, 19 98.

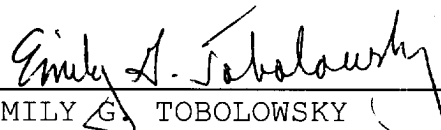
  
U.S. DISTRICT COURT JUDGE

APPROVED AS TO FORM AND SUBSTANCE:

Counsel for the plaintiff:

  
JEFFREY C. BANNON  
Regional Attorney  
Connecticut State Bar No. 301166

Counsel for defendant:

  
EMILY G. TOBOLOWSKY  
Texas State Bar No.  
20087600

Newsom, Terry & Newsom  
Sterling Plaza, Suite 600  
5949 Sherry  
Dallas, TX 75225  
(214) 739-1000  
(214) 739-9009 (fax)

ROBERT A. CANINO  
Supervisory Trial Attorney  
Oklahoma Bar No. 011782

TOBY WOSK COSTAS  
Senior Trial Attorney  
Texas State Bar No. 04855720  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
207 South Houston  
Dallas, Texas 75202  
(214) 655-3335  
(214) 655-3331 (fax)

**CONSENT DECREE**