

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No. RDB-05-CV-2577
)	
A.E. SWEENEY MASONRY, INC.,)	
)	
Defendant.)	
_____)	

CONSENT DECREE

This Consent Decree is entered into by the Plaintiff, the United States Equal Employment Opportunity Commission (the "Commission" or "EEOC") and the Defendant A.E. Sweeney Masonry, Inc. (Defendant), their directors, officers, agents, successors or assigns.

The Commission commenced this action on September 15, 2005, in the United States District Court for the District of Maryland (Northern Division) against Defendant A.E. Sweeney. In its Complaint, the Commission alleged that Defendant engaged in unlawful employment practices by subjecting Charging Parties Lloyd Weedon and Kevin Morrison to certain unlawful employment practices because of their race, Black, and Section 704(a) protected conduct in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* ("Title VII"). The Commission further alleged that Defendant subjected a class of unidentified, similarly-situated Black employees to racial harassment because of their race, Black, in violation of Title VII.

In an attempt to avoid further litigation costs and as a result of settlement discussions, the

Commission and Defendant now desire to resolve this action and all issues raised by the Complaint. For the purpose of resolving this action, the parties acknowledge the jurisdiction of the United States District Court for the District of Maryland (Northern Division) over the subject matter and over the parties to this case for the purpose of entering this Consent Decree and, if necessary, enforcing this Decree.

The Parties hereby agree that:

1. The Court, having examined the terms and provisions of the Consent Decree, find that it is reasonable and just in accordance with the Federal Rules of Civil Procedure and Title VII. The entry of this Consent Decree will further the objectives of Title VII and will be in the best interests of the parties and those for whom the EEOC seeks relief.

2. This Decree shall constitute a full discharge and satisfaction of any and all claims which have been alleged in the Complaint filed in this Title VII action by the EEOC based on the EEOC's determinations of discrimination for the charges filed by Lloyd Weedon and Kevin Morrison (EEOC administrative charge numbers 120-2004-04111 and 120-2004-00513). In this regard, this Decree constitutes a settlement of the instant action brought by the EEOC; however, this Decree shall not constitute a discharge or satisfaction of any claims regarding persons whom are not receiving monetary relief under this Decree, nor shall it operate to prevent EEOC from bringing an action in the future based on another charge or resulting EEOC determination regarding past, present or future aggrieved persons whom have not received monetary relief under this Decree.

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

NON-DISCRIMINATION

3. Defendant, its owners, officers, agents, employees, successors, assigns, and all persons in active concert or participation with it shall comply with all provisions of Title VII and is enjoined from any present or future violations of Title VII. Prohibited discrimination includes, but is not limited to, any harassing conduct or other discrimination because of race, color, and/or conduct protected under Section 704(a) of Title VII.

NON-RETALIATION

4. Defendant, its owners, officers, agents, employees, successors, assigns, and all persons in active concert or participation with it shall not engage in reprisal or retaliation of any kind against any person because such person, either in the past or in the future: (a) opposed any practice made unlawful or reasonably believed to be unlawful under Title VII; (b) filed a charge of discrimination with the Commission or any fair employment practices agency; (c) was identified as a potential witness for the EEOC in an action; (d) requested and/or received relief in accordance with this Decree; (d) participated in any manner in an action under Title VII or in any investigation giving rise to such action; or (e) asserted any rights under this Decree. In this regard, Defendant shall not take any action against any person(s) which constitutes intimidation, coercion, retaliation, harassment, or interference with the exercise of such person's rights under Title VII because of the filing of Charge Nos. 120-2004-04111 or 12F-2004-00513 with the EEOC, which form the basis for this case, or because such person(s) gave testimony or assistance, or participated in any manner in any proceeding in connection with this case under Title VII.

RECORD-KEEPING

5. Defendant shall comply with all applicable record-keeping requirements of Title VII the Commission's regulations, including but not limited to, 29 C.F.R. § 1602.14.

NON-ADMISSION

6. This Decree, being entered with the consent of the EEOC and Defendant shall not constitute an adjudication or finding on the merits of this case and shall not be construed as an admission of liability by Defendant nor as a disavowal by the EEOC of the allegations in the Complaint.

COVERED FACILITIES

7. The provisions of this Consent Decree shall apply to all of Defendant's facilities and work sites or locations.

DURATION OF DECREE

8. This Consent Decree shall be in effect for a period of four (4) years from the date it is entered by the Court.

MONETARY AND OTHER CHARGING PARTY RELIEF

9. Defendant shall pay compensatory damages to Charging Party Lloyd Weedon in the amount of \$30,000.00. This monetary relief shall be paid in four (4) payments by check in the amount of \$7500.00 each made payable to Lloyd Weedon in accordance with the following delivery schedule: (a) the first check shall be paid not later than fourteen (14) days after entry of this Decree by the Court; (b) the second check shall be paid not later than three (3) months and fourteen (14) days after entry of this Decree by the Court; (c) the third check shall be paid not later than six (6) months and fourteen (14) days after entry of this Decree by the Court; and (d) the fourth check shall

be paid not later than nine (9) months and fourteen (14) days after entry of this Decree by the Court. Defendant shall mail each of the aforementioned checks to Mr. Weedon by certified mail at an address to be provided by EEOC. Within three (3) days of each payment, Defendant shall send a photocopy of the check payable to Lloyd Weedon, along with a photocopy of the Certified Mail receipt, to Supervisory Trial Attorney, Tracy Hudson Spicer at the EEOC's Baltimore Field Office. Failure to make any payment within the time set for payment in this Paragraph shall constitute a material breach of the parties' agreement and noncompliance with this Decree for which Defendant and Arthur Edward Sweeney, Jr., shall pay, for each day Defendant is late in making payment to Charging Party Weedon, interest compounded at the IRS quarterly rate for unpaid taxes, for all payment in arrears.

10. Defendant shall pay compensatory damages to Charging Party Kevin Morrison in the amount of \$30,000.00. This monetary relief shall be paid in four (4) payments by check in the amount of \$7500.00 each made payable to Kevin Morrison in accordance with the following delivery schedule: (a) the first check shall be paid not later than fourteen (14) days after entry of this Decree by the Court; (b) the second check shall be paid not later than three (3) months and fourteen (14) days after entry of this Decree by the Court; (c) the third check shall be paid not later than six (6) months and fourteen (14) days after entry of this Decree by the Court; and (d) the fourth check shall be paid not later than nine (9) months and fourteen (14) days after entry of this Decree by the Court. Defendant shall mail each of the aforementioned checks to Mr. Morrison by certified mail at an address to be provided by EEOC. Within three (3) days of each payment, Defendant shall send a photocopy of the check payable to Kevin Morrison, along with a photocopy of the Certified Mail receipt, to Supervisory Trial Attorney, Tracy Hudson Spicer at the EEOC's Baltimore Field Office.

Failure to make any payment within the time set for payment in this Paragraph shall constitute a material breach of the parties' agreement and noncompliance with this Decree for which Defendant and Arthur Edward Sweeney, Jr., shall pay, for each day Defendant is late in making payment to Charging Party Morrison, interest compounded at the IRS quarterly rate for unpaid taxes, for all payment in arrears.

11. In the event that any of the above-referenced payments cannot be delivered to the individuals designated because such person has moved from the address provided by the EEOC, Defendant shall promptly contact Supervisory Trial Attorney, Tracy Hudson Spicer, of the EEOC's Baltimore Field Office to obtain a current address for such individual for purposes of prompt Certified Mail delivery, or, if a current mailing address is not available, to otherwise make arrangements for prompt payment to such individual. Defendant shall thereafter promptly report any efforts made to deliver payment and shall exercise due diligence to complete such delivery.

12. Defendant shall issue, to each person receiving monetary relief pursuant to this Consent Decree, an IRS Form 1099-Misc for each calendar year in which such person received payment and reflecting the amounts paid to that person in that calendar year.

13. Defendant shall offer to unconditionally reinstate Charging Party Lloyd Weedon and Charging Party Kevin Morrison to the positions they held at the time of their discharges by Defendant, to include the present pay rate for such positions, any and all applicable benefits, and retroactive seniority to include seniority credit for all previous periods of employment as well as the period commencing on the dates of their discharges up to and including the dates of their reinstatement. Such offers shall be made twice to Mr. Weedon and twice to Mr. Morrison. The

offers to the Charging Parties shall occur as soon as practicable regarding the first two positions (jobs) that become available after this Decree is entered by the Court. The Charging Parties shall have three (3) days after receipt of such offers to accept them, and if not accepted within that period, they shall be considered rejected. Each offer shall be made in writing and shall identify the position offered, the pay rate for such position, any and all applicable benefits (if any), the start date, contact person, the fact that the offer must be accepted within three (3) days or it is considered rejected, and the geographic location of the job in question. Defendant shall mail each of the aforementioned reinstatement offers by certified mail. Within ten (10) days of each offer, Defendant shall send a photocopy of the offer and response (if any), along with a photocopy of the Certified Mail receipt, to Supervisory Trial Attorney, Tracy Hudson Spicer at the EEOC's Baltimore Field Office.

14. In the event that Charging Party Lloyd Weedon and/or Charging Party Kevin Morrison reject both offers of reinstatement tendered by Defendant in accordance with the requirements of this Decree, Defendant shall provide to that Charging Party the positive letter of recommendation that was previously agreed upon with the EEOC.

15. Defendant shall answer any inquiries about Charging Party Lloyd Weedon or Charging Party Kevin Morrison from their prospective employers by providing a neutral reference stating that the person was employed by Defendant, the dates of his employment, and his position. Defendant shall not provide any further information about either Charging Party to prospective employers, including but not limited to any assessment of their job performance, this Consent Decree, this Action, the charges of discrimination filed by the Charging Parties, or their allegations of discrimination.

16. Defendant's owner Arthur (Ed) Sweeney, Jr. shall serve as guarantor of any and all monetary relief payments required to be made by Defendant under the terms of this Consent Decree. In the event that the Defendant is unable to pay any amount required to be paid in the foregoing paragraphs, such amount(s) shall be paid by Mr. Sweeney in accordance with the terms of this Decree.

EQUITABLE RELIEF: REPORTS TO EEOC OF DISCRIMINATION
ALLEGATIONS AND WITNESSED CONDUCT

17. Defendant shall submit written reports to the Commission regarding the following: (a) all written or verbal complaints of race and/or color harassment or other race and/or color discrimination made to any person with managerial and/or supervisory authority or any person designated by Defendant to receive such complaints, whether sufficient to state an actionable claim under Title VII or not, and any action taken in response to the complaints; and (b) regardless of whether any complaint was made or not, all circumstances about which a person with managerial and/or supervisory authority has actual knowledge and which would cause a reasonable person to suspect that race and/or color harassment or other race and/or color discrimination may have occurred, and any action taken in response to those circumstances. The reports must be sent to the Commission's Baltimore Field Office, to the attention of Supervisory Trial Attorney, Tracy Hudson Spicer, within seven (7) days of any complaints to managers, supervisors or person designated by Defendant, or within seven (7) days of a person with managerial and/or supervisory authority acquiring actual knowledge of facts that could give rise to an objectively reasonable suspicion that race and/or color harassment or other race and/or color discrimination may have occurred, whichever is first. Such reports shall contain the following: (a) a detailed narrative of the circumstances of the

complaint or acquired knowledge; (b) the dates and times pertinent to the complaint or knowledge being reported; (c) the allegations of race and/or color harassment or other race and/or color discrimination and the facts known and/or alleged that are relevant to such complaint; (d) a specific description of the knowledge of possible harassment and/or other discrimination that was acquired; (e) the full name, job title, social security number, work address, last known home address, and last known home telephone number of any complainant; (f) the full name, job title, and work address of any person with managerial and/or supervisory authority with acquired knowledge of possible discrimination; (g) the full name, job title and work address of any persons who received any complaints; (h) if other than the complainant, the full name, job title, social security number, work address, last known home address, and last known home telephone number of (1) any person alleged by a complainant to have been a victim of discrimination or, where there has been no complaint, (2) the potential discriminatee who is the subject of the knowledge acquired by a person with managerial and/or supervisory authority; (i) the full name, job title, work address, and professional relationship to the complainant or potential discriminatee of the person or persons whose conduct is the subject of a complaint or acquired knowledge being reported; (j) and the full name, job title, and work address of any known or alleged witnesses to the incidents alleged by a complainant or reported by a person with managerial and/or supervisory authority. Such reports must be updated and sent to the Commission's Baltimore Field Office every fourteen (14) days thereafter until final action is taken by Defendant on the complaint or the circumstances suggesting possible harassment and/or discrimination. Defendant shall append to all reports required by this provision of the Decree any and all documents generated or obtained in connection with a complaint, allegation or acquired knowledge and/or in the course of its investigations, including, but not limited to, any charges.

complaints, correspondence, investigatory reports, memoranda, notes, witness statements, affidavits or other related documents of any character. Defendant shall retain any and all such documents for the duration of this Consent Decree and for one (1) year thereafter.

EQUITABLE RELIEF: POLICIES AND TRAINING

18. Defendant shall adopt and adhere to the anti-harassment/anti-discrimination policy set forth in Attachment A. Defendant shall distribute a copy of its anti-harassment/anti-discrimination policy to all current owners, officers, employees and independent contractors within fourteen (14) days of the entry of this Consent Decree by the Court. Defendant shall provide a copy of this policy to all new officers, employees and independent contractors hired during the operation of this Decree on such person's first day of work. Defendant shall maintain a Spanish language translation of the above-referenced policy set forth in Attachment B and shall provide it to persons whom are limited in the ability to read and understand the English language but whom are able to read and understand the Spanish language. With regard to any persons whom Defendant determines are limited in the ability to read and understand the English language but whom are not able to read and understand the Spanish language, Defendant shall make all objectively reasonable efforts to explain the above-referenced policy to such persons by means of communication that such persons understand. Defendant shall be free to increase the protections afforded by this policy by (a) designating additional avenues of complaint for potential victims and/or (b) defining and prohibiting forms of discrimination not expressly prohibited by federal statutes enforced by the EEOC as of the date of entry of this Decree.

19. Defendant shall require all current and future owners, officers, managers, supervisors, and persons designated to receive and/or investigate complaints of harassment and/or discrimination

to attend training regarding the requirements of Title VII, with particular emphasis on race and color harassment, other forms of race and color discrimination, and prohibited retaliation. Such training shall be not less than three (3) hours in duration. In addition, the owners of Defendant and any person(s) designated to investigate complaints of harassment and/or discrimination shall attend training regarding legal standards and practical techniques for conducting investigations of alleged harassment and/or discrimination. Such training is to be provided by a third-party at the expense of Defendant, with format and content of training subject to review by the Commission. The training must be conducted within one (1) month after entry of this Decree and one (1) month after the commencement of employment for all new hires in such positions. The EEOC must be notified, in writing, as to the identity and qualifications of the trainer, all content of such training (including training manuals and handout materials), method of presentation, length of training course(s) and the names and job titles of attendees within one (1) month of such training. Defendant shall have the option of audiotaping or videotaping the first training session and then fulfilling its duty to provide any subsequent training sessions required by this Decree by requiring trainees to listen to an audiotaped session or by requiring attendance of trainees at a viewing of a videotaped session. Any trainee who receives training via audiotape or videotape of a previous session shall be given the name and telephone number of a Defendant contact person and instructed to direct any questions regarding the content of the training to that contact person who shall, if unable to answer one or more such questions, consult with the third-party trainer referenced herein.

20. Defendant shall provide a one (1) hour training session to all current and future employees regarding the anti-harassment/anti-discrimination policy set forth in Attachment A (or if applicable, Attachment B) in a reasonably prompt manner not to exceed the end of such

employee's first week of work, or in the case of current employees, within one (1) month of entry of this Decree. Defendant shall have the option of audiotaping or videotaping the first training session and then fulfilling its duty to provide any subsequent training sessions required by this Decree by requiring trainees to listen to an audiotaped session or by requiring attendance of trainees at a viewing of a videotaped session. Any trainee who receives training via audiotape or videotape of a previous session shall be given the name and telephone number of a Defendant contact person and instructed to direct any questions regarding the content of the training to that contact person who shall, if unable to answer one or more such questions, consult with the third-party trainer referenced herein. In the event Defendant exercises this option, within a reasonable time frame after entry of this Decree by the Court Defendant shall secure the services of a qualified Spanish language interpreter to interpret, at Defendant's expense, any training session that has been audiotaped or videotaped in English for presentation to trainees, and shall present the Spanish language interpretation to persons whom are limited in their ability to understand spoken English or who otherwise request a Spanish version of the training.

EQUITABLE RELIEF: POSTING OF NOTICE

21. Defendants shall post copies of the Notice attached as Attachment C in a conspicuous location at all of their facilities and at all places where employee notices are posted. The Notice shall be posted for a period of four (4) years, with such period commencing upon entry of this Decree. Such Notice shall be typed legibly using not less than twelve (12) point font. If multiple pages are used for each such Notice, they shall not be displayed one page behind another but must be posted so that all pages are in order and simultaneously visible (i.e., in horizontal row or vertical column configuration). In addition, Defendant shall post notice of all applicable federal equal employment

opportunity laws and all other notices required by law. In the event that any of aforementioned notices becomes defaced, marred or otherwise made unreadable, Defendant shall immediately post a readable copy of such notice(s).

DISPUTE RESOLUTION AND COMPLIANCE

22. This Court shall retain jurisdiction to enforce the terms of this Decree and will have all available powers to enforce this Decree, including but not limited to monetary sanctions and injunctive relief. In this regard, the Court shall retain jurisdiction to enforce this Decree regarding all acts or omissions of Defendant that are covered by the terms of the Decree and that occur within the four (4) year duration of the Decree.

23. Upon motion of the Commission, this Court may schedule a hearing for the purpose of reviewing compliance with this Consent Decree. Prior to such motion, the Commission shall notify the Defendant, in writing, of the alleged non-compliance. Upon receipt of written notice, Defendant shall have fifteen (15) days to either correct the alleged violation, and so inform the other party, or deny the alleged violation, in writing:

- A. If the parties remain in dispute they shall attempt in good faith to resolve their dispute;
- B. If the parties can not in good faith resolve their dispute, the Commission may file with the Court a motion to correct and remedy the breach;
- C. Each party shall bear its own costs, expenses and attorney's fees incurred in connection with such action; and
- D. Jurisdiction to resolve any dispute arising under this Decree resides in the United States District Court for the District of Maryland.

24. The Commission, its agents and employees shall in their discretion have the legal right to enter any of Defendant's facilities, without any prior notice to the Defendant, and conduct an on-site inspection to ensure compliance with Title VII and any of the terms of this Decree. Such inspections may, at the discretion of the Commission, include access to any and all relevant documents for the purposes of inspection and duplication; ex parte interviews or depositions of any current employees; interviews or depositions of owners, directors, and officers; inspection of any area within the facility; and any other investigatory technique or procedure permitted by Title VII or the Commission's regulations. In addition, the Commission may in its discretion require that Defendant mandate the appearance of its personnel for interview or deposition at Defendant's offices, at the EEOC's Baltimore Field Office, or at any other location within a reasonable commuting distance from those individuals' residences or job sites. The Commission may at any time move the Court for a hearing for the purpose of compelling Defendant to cooperate in any aspect of on-site inspection, interview or deposition under the terms of this Decree. Neither the Commission's right to conduct on-site inspections, interviews or depositions, nor any other provisions of this Decree shall be construed to limit or impair in any manner any other Commission right to conduct investigations of the Defendant that is provided by law, including, but not limited to, investigating charges of discrimination filed under Title VII, the Equal Pay Act ("EPA"), the Age Discrimination in Employment Act ("ADEA"), Title I of the Americans with Disabilities Act, and any statute over which the Commission is given jurisdiction in the future, and conducting directed investigations authorized under the EPA, the ADEA, and any future statute which authorizes directed investigations.

COURT COSTS AND ATTORNEY FEES

25. Each party shall bear its own court costs and attorneys' fees.

MISCELLANEOUS

26. Within ninety (90) days of the date this Decree is entered by the Court, each six (6) months thereafter, and at the conclusion of the term of the Decree, Defendant will report in writing to the EEOC's Baltimore Field Office, to the attention of Supervisory Trial Attorney, Tracy Hudson Spicer, concerning the implementation of this Decree. Each report shall include the following information: (a) a certification that the anti-harassment/anti-discrimination policy set forth in Attachment A has been published to employees and training has been conducted regarding that policy as required by this Decree, as well as a list of all persons who have attended that training during the reporting period; and (b) a certification that the Notice set forth in Attachment B is posted in accordance with this Decree.

27. Nothing in this Decree shall be construed to preclude the EEOC from investigating or instituting legal action on the basis of any like or related claims not raised in the subject Complaint, nor does anything in this Decree preclude Lloyd Weedon, Kevin Morrison or the EEOC from filing EEOC charges against the Defendant in the future on claims not related to the subject Complaint.

28. Within fourteen (14) days of entry of this Decree, Defendant shall provide to the EEOC all originals and copies of any and all documents in its possession, custody or control (including its owner's possession, custody or control) concerning Charging Parties Lloyd Weedon and Kevin Morrison that it did not generate or obtain in the ordinary course of its business regarding Mr. Weedon's employment with Defendant, and it shall not retain any copies or originals of such documents. In addition, Defendant shall remove from any files pertaining to Charging Party Weedon and/or Charging Party Morrison any and all documents that reference this Consent Decree, this

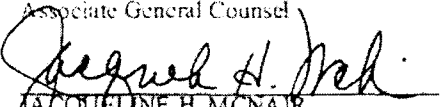
Action, the charges of discrimination filed by the Charging Parties, or their allegations of discrimination.

IT IS AGREED:


EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

JAMES LEE
Deputy General Counsel

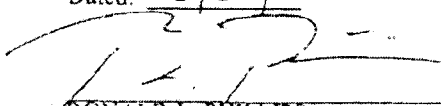
GWENDOLYN YOUNG REAMS
Associate General Counsel


JACQUELINE H. MCNAIR
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Dated: 3/30/06


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Dated: 3/30/06


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A.E. SWEENEY MASONRY, INC.


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Facsimile #: (202) 783-1392
Attorney for Defendant

Dated: 3/28/06


ARTHUR EDWARD SWEENEY, JR.
Owner of Defendant, and individually as
guarantor under Paragraph 16 of this Consent
Decree

Dated: 3-27-06

Baltimore, MD 21201
Office #: (410) 962-4628
Facsimile #: (410) 962-4270/2817

Dated: 3/30/06

IT IS SO ORDERED:

DATE: March 31, 2006



HONORABLE RICHARD D. BENNETT
United States District Judge