

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO APR 13 2006

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff.

v.

ROSWELL RADIO, INCORPORATED,

Defendant.

MATTHEW J. DYKMAN
CLERK

No. CV-04-729 BB/LCS

CONSENT DECREE

The United States Equal Employment Opportunity Commission (the Commission or EEOC) filed this action against Roswell Radio, Inc. ("Roswell Radio" or "defendant") to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (Title VII), the Pregnancy Discrimination Act of 1978, and the Civil Right Act of 1991, 42 U.S.C., § 1981a. In the Complaint the Commission alleged that defendant subjected Lisa Lassa to harassment because of her pregnancy and sex, which forced her to resign. The Commission also alleged that Jennifer Fairclough and Tracye Nelson were subjected to sexual harassment, which created a hostile work environment for them because of their sex, female. The Commission alleged that Jennifer Fairclough was forced to resign her employment because of the sexual harassment and the employer's failure to provide preventive or remedial relief and that Ms. Nelson was subjected to retaliatory discharge.

This Consent Decree does not constitute an admission of liability by Roswell Radio. Roswell Radio expressly denies that it discriminated or retaliated against any party on any basis under Title VII.

74

The parties do not object to the jurisdiction of the Court over this action and waive their rights to a hearing and the entry of findings of fact and conclusions of law.

It is hereby **ORDERED, ADJUDGED AND DECREED:**

1. This decree resolves all claims of the Commission against defendant on behalf of Tracey Nelson, Lisa Lassa and Jennifer Fairclough arising out of the issues in this lawsuit.

INJUNCTION

2. Defendant, their owners, stockholders, managers, agents, officers, employees, successors and assigns and all persons in active concert or participation with them, are permanently enjoined for the duration of the decree from discriminating against any employee because of his or her sex, including subjecting employees or individuals to sexual harassment and/or pregnancy harassment. This injunction will remain in effect for the duration of the decree at any facility operated by defendant in the state of New Mexico.

3. Defendant, their owners, stockholders, managers, agents, officers, employees, successors and assigns and all persons in active concert or participation with them, are permanently enjoined for the duration of the decree from retaliating against any employee or individual because the employee or individual has (a) opposed practices made unlawful by Title VII or a state equal employment opportunity statute, (b) filed a charge of discrimination, including sexual harassment, (c) assisted or participated in the filing of a charge of discrimination, including sexual harassment, (d) assisted or participated in an investigation or proceeding under Title VII or a state equal employment opportunity statute, or (e) files an internal complaint of discrimination. This injunction will remain in effect for the duration of the decree at any facility operated by defendant in the state of New Mexico.

RELIEF TO CHARGING PARTIES

4. In accordance with this decree, defendant shall pay the total amount of two hundred eighty thousand and zero cents (\$280,000.00). The settlement amount shall be paid as designated in Exhibit B. Roswell Radio agreed to make the settlement payment to avoid the costs and risks of continued litigation, and not as an admission of any legal or monetary liability as to any claims in these proceedings or in related proceedings pending in New Mexico State District Court.

5. Defendant shall pay the settlement amount on or before thirty (30) days from March 7, 2006. Payment to Jennifer Fairclough and Lisa Lassa shall be c/o their attorneys. Payment to Tracye Nelson shall be via business check made payable to Ms. Nelson and mailed directly to her at the address provided by the EEOC. Within five (5) days of issuance of the checks, defendant shall submit a copy of the checks and related correspondence to the Regional Attorney, Equal Employment Opportunity Commission, Albuquerque Area Office, 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102-2189.

6. In response to any employment inquiries or reference checks concerning Tracye Nelson, Lisa Lassa and Jennifer Fairclough, defendant shall provide only their dates of employment, each position held, job duties and salary. This provision shall remain in force for so long as these women use Roswell Radio as a reference and is not limited to the three (3) year duration of this decree.

7. Defendant shall not take any action against any individual in retaliation for filing a charge of employment discrimination or for participating, assisting or testifying in this action.

DEFENDANT'S CORRECTIVE POLICIES AND PRACTICES

8. Defendant shall institute and carry out policies and practices that will provide a work environment free from sex and pregnancy discrimination, including policies, procedures and practices to prevent sexual harassment and pregnancy harassment of their employees and other individuals, and that allow employees and other individuals to raise concerns or complaints about matters made unlawful by Title VII, whether alleged, perceived or actual without retaliation. To assist defendant in its effort to provide a work environment free of sex discrimination, sexual harassment and retaliation, defendant shall take the actions provided for in Paragraphs 9, 10, 11, 13 and 14.

9. Within sixty (60) days of the entry of this decree, defendant shall review any existing policies on sex discrimination, including sexual harassment and pregnancy harassment, and make any changes necessary so that their policies and procedures comply with Title VII. Should defendant not currently have an existing policy prohibiting sexual harassment or pregnancy harassment and/or a grievance procedure, defendant shall implement an effective anti-harassment policy and procedure to receive employee complaints of harassment based on sex or pregnancy. Defendant shall ensure their written policy includes a statement that employees are encouraged to complain directly to EEOC or any state equal opportunity agency. After reviewing and making any necessary revisions to its policies, defendant shall distribute the revised sexual harassment and pregnancy harassment policies and complaint procedures to each of its current full and part-time employees, and to each new employee hired for the duration of this decree. The policy and procedure statements that are provided to defendant's employees should be designed to present easily understood, convenient, consistent, confidential and reliable

procedures for reporting incidents of sexual harassment, pregnancy harassment, and retaliation in defendant's New Mexico facilities. These procedures, at a minimum, shall include provisions incorporating the following:

- A. Within thirty (30) days of entry of this decree and for the duration of this decree, defendant shall designate at least one employee in a supervisory or managerial position at each New Mexico facility to serve as investigative officer for sexual harassment or pregnancy harassment issues;
- B. Within thirty (30) days of entry of this decree and for the duration of this decree, the name, responsibilities, work location, and telephone number of the investigative officer will routinely and continuously be posted and provided to all employees so that an employee seeking such name can enjoy anonymity and remain inconspicuous to other employees;
- C. For the duration of this decree, complaints of sexual harassment or retaliation will be accepted in writing or orally and all complaints will be taken seriously and investigated;
- D. Only those who have an immediate need to know, including the investigative officer(s), the alleged target of harassment or retaliation, the alleged harasser(s) or retaliator(s) and any witnesses, may find out the identity of the complainant;
- E. During an investigation of a sexual harassment complaint or pregnancy harassment complaint of an employee, the investigative officer shall endeavor to immediately interview all affected employees and potential witnesses to the alleged harassment;

- F. All parties contacted in the course of an investigation will be advised that any retaliation or reprisal against an individual who is an alleged target of harassment or retaliation, who has made a complaint, or who has provided evidence in connection with a complaint will not be tolerated and could result in disciplinary action;
- G. Each investigative officer will receive thorough and appropriate training about sexual harassment and will have the responsibility for expeditiously investigating all complaints. This training shall consist of at least two hours in addition to that provided under paragraph 11 of this decree;
- H. The investigative officer will recommend remedial measures, if appropriate, based upon the results of the investigation, and defendant will promptly consider and act upon such recommendation;
- I. The investigative officer will maintain a file on the original complaint(s) and any follow-up investigation;
- J. Defendants owners, stockholders, managers, officials, agents or employees who engage in sexual harassment, pregnancy harassment or retaliation; who fail to cooperate with company-sponsored investigations of sexual harassment, pregnancy harassment or retaliation; or who refuse to implement remedial measures will be advised that they may be sanctioned severely by loss of income, suspension or dismissal.

10. Defendant shall post within thirty (30) days of the entry of this consent decree, and continuously for a period of thirty six (36) months, in prominent places frequented by employees of defendant's New Mexico facilities, the Notice attached to this decree as Exhibit A. This Notice shall be the same type, style and size as in Exhibit A.

11. Defendant shall provide training on sex discrimination, sexual harassment, pregnancy harassment and retaliation according to the following terms:
 - A. Defendant shall provide at least three training sessions during the term of this decree. All owners, stockholders, managers, supervisors and employees, including Penny Dunn if she is employed, at New Mexico facilities owned or operated by defendant, shall attend the training. Duplicative sessions may be held to accommodate staffing needs. Defendant shall be responsible for all costs associated with this training.
 - B. During the first year of the decree, the training shall be conducted within ninety (90) days of the entry of this decree. Additional training shall be conducted at least once each remaining year of this Decree.
 - C. Defendant shall select a qualified trainer and shall submit the trainer's name, resume, training agenda and the date(s) of the proposed training to the Regional Attorney of the Albuquerque Area Office of the Equal Employment Opportunity Commission within forty-five (45) days of the entry of this decree. During the second and third years of the decree, the above information shall be submitted to the Regional Attorney at least sixty (60) days prior to the seminar-training session. The Commission shall have thirty 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 seminar. In the event the Commission does not approve defendant's designated consultant/lecturer, the Commission shall designate the consultant/ lecturer at a cost not to exceed \$1000.00 per seminar-training session which shall be paid by defendant.
 - D. The training shall include a minimum of two hours of instruction. All personnel,

designated in Paragraph A shall both register and attend the training. The registry of attendance shall be retained by defendant at least for the duration of the decree.

- E. The training, at a minimum shall include the subjects of: what constitutes sex discrimination, including sexual harassment, pregnancy harassment 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, pregnancy 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, pregnancy harassment or retaliation in the workplace.
- F. Immediately following the training sessions, defendant's designated human resources official shall speak to the employees about: (1) potential discipline that can be taken against owners, stockholders, supervisors, managers and employees who commit acts of sex discrimination or retaliation or who allow sex discrimination or retaliation to occur in the workplace; (2) the importance of maintaining an environment free of sex discrimination and retaliation; and (3) the employer's policies regarding sex discrimination, sexual harassment, pregnancy harassment, and retaliation. This time shall not be counted toward the two-hour minimum training required in paragraph 11.D.
- G. For the duration of this decree, at or around the time of hire, employees hired after the annual training is presented, shall view a video tape of the training and/or a professional training tape which covers the topics set forth in paragraph 11.E.

shall be given any written material disseminated at the training.

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

13. Within ninety (90) days of the entry of this decree, defendant shall require that John Dunn attend at least six individual counseling sessions each with a qualified counselor, therapist or psychologist to acquaint him with the effects of actual and/or perceived sexual harassment upon the victim. Defendant shall be responsible for paying for such counseling sessions. In addition, defendant shall require John Dunn to attend all sexual harassment training sessions required for employees pursuant to this decree.

REPORTING BY DEFENDANT AND ACCESS BY EEOC

14. Defendant shall report in writing and in affidavit form to the Regional Attorney of the Commission's Albuquerque Area Office at 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102-2189, 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, sexual harassment, pregnancy harassment and retaliation.
- B. The name, address, position, social security number and telephone number of any employee who during the six months preceding the report has brought allegations of sex discrimination, harassment, or retaliation arising from activities in defendant's New Mexico facilities against defendants or its personnel, including but not limited to owners, stockholders, management officials, vendors, agents, or employees. The nature of the complaint, investigatory efforts made by defendants and the corrective action taken, if any, shall be specified.

- C. The registries of persons attending each of the seminar-training sessions required in paragraph 11 of this decree and a list of current employees on the day of the seminar-training session.
 - D. An affidavit by defendant stating: (1) the Notice required in paragraph 10 of this decree was posted and the locations where it was posted, and (2) it has complied with paragraphs 9, 10, 11, 13, 14, and 15 of this decree.
 - E. Copies of any video presentations defendant has utilized to comply with the requirements of this decree.
15. The Commission upon reasonable notice shall have the right to enter and inspect the premises of defendant's New Mexico facilities to insure compliance with this decree and federal anti-discrimination laws.

COSTS AND DURATION

16. Each party shall bear its costs and attorney's fees incurred as a result of this action through the entry of this decree.


17. The duration of this decree shall be three (3) 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.

18. This decree shall expire by its own terms at the end of three (3) years after entry, without further action by the parties.

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

20. This Decree shall become effective upon the date entered.

ENTERED AND ORDERED this 12 day of April 2006.




THE HONORABLE BRUCE D. BLACK
UNITED STATES DISTRICT JUDGE

APPROVED AND CONSENTED TO:

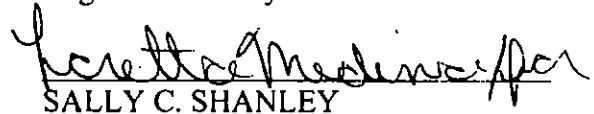
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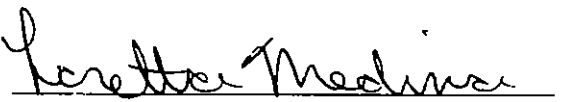


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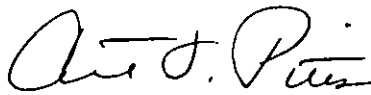
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NOTICE TO ALL EMPLOYEES OF
ROSWELL RADIO, INC.

This Notice is posted pursuant to a Consent Decree entered into between Roswell Radio, Inc., and the Equal Employment Opportunity Commission (EEOC).

It is unlawful under the federal law (Title VII of the Civil Rights Act of 1964) 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 and pregnancy harassment.

Roswell Radio, Inc., prohibits all forms of sex discrimination, including sexual harassment. Prohibited sexual harassment includes, but is not limited to, the following conduct:

1. unwelcome touching of a sexual nature;
2. unwelcome comments, including comments regarding intimate body parts, or clothing and discussion of sexual jokes or sexual behavior;
3. unwelcome requests for dates, sexual favors and propositions;
4. unwelcome distribution in the workplace of cartoons, pictures or drawings of a sexual nature; and
5. unwelcome display of pornographic materials in the workplace.

Roswell Radio, Inc., also prohibits any form of harassment of persons because of the condition of pregnancy.

Roswell Radio, Inc., 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.

If you believe you are being sexually harassed, harassed because of pregnancy, discriminated against or retaliated against you should report this to the designated investigative officer at your workplace who may be contacted at _____

If you believe you have been discriminated against or retaliated against by Roswell Radio, Inc., you always have the right to seek assistance from:

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

or

- (2) The New Mexico Department of Labor, Human Rights Division, 1596 Pacheco St., Suite 103, Santa Fe, New Mexico 87505, 1-800-566-9471 or 505-827-6838.

You have the right to file a charge with the EEOC or the Department of Labor if you believe you are being discriminated against.

DISTRIBUTION OF SETTLEMENT AMOUNT

Tracye Nelson	Fifty two thousand five hundred dollars and zero cents (\$52,500.00) in compensatory damages, specifically for personal injuries.
Jennifer Fairclough	One hundred thirteen thousand seven hundred and fifty dollars and zero cents (\$113,750.00) in compensatory damages, specifically for personal injuries, which sum includes attorney fees and costs in the amount of \$43,705.73.
Lisa Lassa	One hundred thirteen thousand seven hundred and fifty dollars and zero cents (\$113,750.00) in compensatory damages, specifically for personal injuries, which sum includes attorney fees and costs in the amount of \$46,193.72.