

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

**(2) JAMES OWINGS AND LANCE
WHISENNAND,**

Plaintiff Intervenor,

V.

**(1) ACTION, INC., an
Arkansas Corporation,**

Defendant.

CASE NO. CIV-05-749-W

FILED

JUN 20 2006

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY BS DEPUTY

CONSENT DECREE

THIS CONSENT DECREE is made and entered into by and between the Equal Employment Opportunity Commission (“EEOC”), James Owings, Lance Whisennand and Action, Inc. (“Action”) in the United States District Court for the Western District of Oklahoma, with regard to the EEOC’s Complaint filed on June 30, 2005 (Complaint), in Civil Action No. CIV-005-749-W. The Complaint is based upon Charges of Discrimination filed by James Owings and Lance Whisennand, against the Defendant employer.

The above-referenced Complaint alleges that the Defendant Action, Inc. violated Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991, by subjecting the Charging Parties to sexual harassment, retaliation and constructive discharge. The Defendant employer denies all of the allegations made in the Complaint filed by EEOC and all the allegations contained in the complaint filed by Plaintiff Intervenors. The Charging Parties intervened in this action, as permitted by law.

The EEOC, Plaintiff Intervenors and Defendant Action 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. This Consent Decree resolves all issues raised in EEOC Charge Nos. 311 2003 02911 and 311 2003 02909. This Decree further resolves all issues raised in the Complaint filed by the EEOC in this civil action and the Complaints filed by the Charging Parties. The EEOC, Charging Parties waive further claims and/or litigation on all issues raised in the above-referenced Charges and Complaint. The EEOC does not waive processing or litigating charges other than the above-referenced Charge.

2. The parties agree that this Consent Decree does not constitute an admission by Action of any violation of Title VII or any state law claims alleged by Plaintiff Intervenors. The Defendant Action denies any violation of local, state or federal law, common or statutory, including but not limited to, Title VII of the Civil Rights Act of 1964, as amended or Title I of the Civil Rights Act of 1991.

3. Defendant agrees that it shall conduct all employment practices in a manner which does not subject any employee to discrimination as prohibited by Title VII of the Civil Rights Act of 1964. Defendant further agrees that there shall be no retaliation against any employee because that person has opposed any practice made unlawful under Title VII, or has filed a charge of discrimination, or has given testimony, assistance, or has participated in any manner in any

investigation, proceeding or hearing under Title VII.

4. Defendant agrees to post the Notice appended hereto as Attachment "A" on the employee bulletin board at all of Defendant's work sites within ten (10) days after the entry of the Consent Decree. Defendant will report to the EEOC that it has complied with this requirement within 14 days after posting the notice. The notice shall remain posted during the term of the Consent Decree.

5. The Defendant agrees to immediately implement policies regarding sexual harassment and retaliation as prohibited by Title VII including the implementation and notice of a complaint procedure for employees to notify Defendant of any alleged complaints of discrimination.

6. For each year that the Consent Decree is in effect, Defendant agrees to conduct training for all employees, including management employees, advising them of the requirements and prohibitions of the federal anti discrimination laws with a special emphasis on sexual harassment and retaliation. The training will inform the employees of the complaint procedure for individuals who believe they have experienced discrimination. The training will also advise the employees of the consequences of violating the federal anti-discrimination laws. The training shall be at least two (2) hours in duration. No less than 10 days before the training is conducted, Defendant agrees to give written notice to the EEOC as to the date and location of the training, the name and qualifications of the person providing the training and the substance of the training. All materials used in conjunction with the training shall be forwarded to the EEOC. Within 20 days following the training, Defendant shall submit to the EEOC confirmation that the training was conducted, and a list of attendees, and a copy of all materials used in conjunction with the training.

7. No less than 30 days after the training is conducted, Defendant agrees to give written

notice to the EEOC as to the date and location of the training, the name of the person providing the training and the substance of the training.

8. During the effective period of this Decree, Defendant shall, every six (6) months, provide written notification to the EEOC's Regional Attorney in its St. Louis District Office of any internal complaint of sexual harassment, made by any employee, including the name(s) of the employee(s), a description of the investigation of the complaint(s), the finding of the investigation and a description of action taken, or resolution of the complaint(s). In the event there are no complaints of sexual harassment, made by any employees during any six (6) month reporting period, Defendant shall provide written notification to the EEOC's Regional Attorney in its St. Louis District Office that no such complaints have been made.

9. Defendant agrees to remove from all personnel files of the Charging Parties, all documents, entries and references relating to: the facts and circumstances which led to the filing of the charges of discrimination; the charge itself; and the complaint filed by the EEOC in federal court based upon the charges.

10. Defendant agrees to pay monetary relief to the Charging Parties, for all claims, the total sum of forty thousand and no/100 dollars (\$40,000.00), inclusive of attorneys fees and costs.

11. The payment referenced in paragraph 10, above, shall be made 10 days after the date of entry of the Consent Decree, by cashier's check made payable to the Charging Parties and their counsel. The check shall be sent by certified mail, return receipt requested or by hand delivery to Charging Parties attorney.

12. Defendant agrees to report to the EEOC within 14 days of entry of this Consent Decree, regarding its compliance with the agreements set forth in paragraphs 2 through 10 above.

13. All reports to the EEOC required by the Consent Decree shall be sent to Michelle M. Robertson, Sr. Trial Attorney, EEOC, 215 Dean A. McGee Avenue, Suite 524, Oklahoma City, Oklahoma 73102.

14. If Defendant, Action, fails to tender payment or otherwise fails to timely comply with the terms of paragraphs 10-11 above, Defendant Action, 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, Charging Parties, Aggrieved Parties, nor Defendant Action, 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 Defendant Action, fails to perform the promises and representations contained herein. The EEOC shall be authorized to seek compliance with the Consent Decree through civil action in the United States District Court.

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

17. The term of this Decree shall be for two (2) years from the effective date. The Court shall retain jurisdiction to enforce the terms of this Decree until the expiration of the term of the Consent Decree.

SO ORDERED, ADJUDGED AND DECREED this 20th day of

June, 2006.


JUDGE LEE R. WEST
U.S. DISTRICT COURT JUDGE

APPROVED FOR ENTRY:

FOR PLAINTIFF U.S. E.E.O.C.:

ROBERT JOHNSON
Regional Attorney
St. Louis District Office

BARBARA A. SEELY
Supervisory Trial Attorney
St. Louis District Office

s/Michelle M. Robertson
MICHELLE M. ROBERTSON, OBA #14084
Sr. Trial Attorney
**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION**
Area Office for the State of Oklahoma
215 Dean A. McGee Avenue, Suite 524
Oklahoma City, Oklahoma 73102
Tel No. 405-231-4363
Fax No. 405-231-5816

FOR PLAINTIFF INTERVENORS:

s/ Michael R. Coulson
*I certify that I have the signed original of this document,
which is available for inspection at any time by the Court or a party to this action.
Michael R. Coulson
Attorney for Charging Parties
P.O. Box 1028
Stillwater, Oklahoma 74076-1028
(405) 385-0048

CONSENT DECREE

FOR DEFENDANT Action:

s/ Evan Gatewood

*I certify that I have the signed original of this document,
which is available for inspection at any time by the Court or a party to this action.

Robert L. Magrini

Evan B. Gatewood

Hayes, Magrini & Gatewood

1220 North Walker

P.O. Box 60140

Oklahoma City, OK 73146-0140

Tel No. (405) 235-9922

Fax No. (405) 235-6611

rmagrini@hmglawyers.com

egatewood@hmglawyers.com

Attachment A

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Dallas District Office 207 S. Houston Street, 3rd Floor

Dallas, TX 75202-4726
(214) 655-3355
TTY (214) 655-3363
FAX (214) 655-3443

NOTICE TO ALL EMPLOYEES

This NOTICE is being posted pursuant to a Consent Decree entered in Federal Court between ACTION, INC. and the U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC). This NOTICE will be conspicuously posted for a period of two (2) years at this facility and in all places where employment notices are posted. It must not be altered, defaced, or covered by any other material.

POLICY: Discrimination of any kind can and often will detract from employees' job performance, discourage employees from remaining on the job, keep employees from advancing in their careers and lowers overall employee morale and productivity. It is the policy of ACTION that sexual harassment and retaliation of any kind as prohibited by federal anti discrimination law is unacceptable conduct and will not be condoned.

PURPOSE: It is the purpose of this policy to reaffirm and amplify the position of Title VII of the Civil Rights Act of 1964, as amended, and the Equal Employment Opportunity Commission's guidelines on retaliation and to reiterate ACTION's policy on discrimination.

SCOPE: This policy extends to all employees of ACTION both management, non-management, and temporary/probationary.

DEFINITIONS: Sexual harassment has been defined as follows: Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment is a form of misconduct that undermines the integrity of the employment relationship. No employee, either male or female, should be subjected to unsolicited and unwelcome sexual conduct, either verbal or physical.

Examples of behavior that may constitute sexual harassment include but are not limited to the following:

- * Hugging, grabbing or any type of unnecessary touching of another person.
- * Making unwelcome sexual advances.
- * Foul or obscene language of a sexual nature, including jokes.
- * Requests for sexual favors whether in exchange for benefits or otherwise.

Title VII prohibits retaliation because allowing such conduct would have a chilling effect upon the willingness of individuals to speak out against employment discrimination, to participate in an internal investigation or to participate in the EEOC process. Retaliation has been defined as taking adverse action against a person who has:

- Opposed any practice made unlawful under Title VII
- Has filed a charge of discrimination
- Has given testimony, assistance, or has participated in any manner in any investigation, proceeding or hearing under Title VII.

Examples of adverse action include but are not limited to the following: Firing a person, denial

of a promotion, refusal to hire, denial of job benefits, demotion, suspension, discharge, reprimands, negative evaluations, harassment, negative job references and limiting access to other privileges allowed all employees.

RESPONSIBILITY: Each manager and supervisor has a responsibility to maintain a workplace free of retaliation. Each level of management is responsible for ensuring that all personnel policies, procedure, and activities are in full compliance with applicable federal, state, and local equal employment laws, statutes, rules, and regulations regarding discrimination and retaliation. Employees are expected to read, understand, and follow ACTION's policies against discrimination.

REPORTING PROCEDURES: Any employee who believes that he or she has been subjected to retaliation is expected to report the alleged act as soon as possible to either that person's immediate supervisor, any supervisor or manager with ACTION or to the Human Resources Department. The Human Resources Department may be contacted at (address) _____ or by telephone at _____. Supervisors and managers who are informed of an alleged incident of discrimination must immediately notify the Human Resources Department.

A person either alternatively, or in addition to reporting such an allegation to company officials, may contact the U.S. Equal Employment Opportunity Commission for the purposes of filing a charge of employment discrimination. The address and telephone number of the U.S. EEOC office is 210 Park Avenue, Suite 1350, Oklahoma City, OK 73102; (405) 231-4911. Information about your rights and how to file a charge is available on the Internet at www.eeoc.gov.

INVESTIGATION OF COMPLAINTS: A complete investigation of each complaint will be undertaken immediately by the Human Resources Department. The investigation may include interview of all employees and supervisors at the facility, the inspection of documents, including personnel records, and full inspection of the premises.

PUNISHMENT FOR VIOLATION: Employees engaged in retaliation as prohibited by Title VII can expect serious disciplinary action. After appropriate investigation, any employee, whether management or non-management, who has been found to have discriminated against another employee will be subject to appropriate sanctions, depending on the circumstances, from a written warning in his or her personnel file up to and including termination of employment.

RETALIATION: There shall be no retaliation against any employee because that person has opposed what they believe to be unlawful employment practices; or has filed a charge of discrimination, or has given testimony, assistance, or has participated in any manner in any investigation, proceeding or hearing under Title VII of the Civil Rights Act of 1964. ACTION will not punish you for reporting discrimination simply because you have made a complaint under the above guidelines.

PROTECTION OF PRIVACY: The question of whether a particular action or incident constitutes gender discrimination requires a determination based on all available facts. ACTION will therefore make a concerted effort to protect the privacy of all personnel. Confidential information will be shared on a need-to-know basis to complete the investigation and to deal appropriately with the situation.

EXCEPTIONS: There are no exceptions to this policy.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE REMOVED OR DEFACED BY ANYONE.
THIS NOTICE WILL BE POSTED FOR A PERIOD OF TWO YEARS.

Signed this _____ day of _____, _____.

Date

ACTION Representative

Date

Don Stevens, Acting Area Director
Equal Employment Opportunity Commission