

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiffs,

v.

**MULLINAX FORD NORTH CANTON, INC.
D/B/A MULLINAX FORD NORTH CANTON,**

Defendant.

Civil Action No. 5:06CV1972

CONSENT DECREE

INTRODUCTION

A. This action was instituted by the United States Equal Employment Opportunity Commission (the "EEOC" or the "Commission") on August 17, 2006 under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 ("Title VII"). The EEOC alleged in its Amended Complaint that Defendant Mullinax Ford North Canton, Inc. d/b/a Mullinax Ford North Canton ("Defendant") discriminated against its former employee, Avery Williams ("Williams"), on the basis of his race, Black, by subjecting him to a racially hostile work environment and then by retaliating against him for engaging in activities protected by Title VII. The EEOC alleged that the retaliatory activity resulted in Williams' constructive discharge. The Commission further alleged in its Complaint that other employees in the workplace were harmed by the racially hostile environment.

In response to the Amended Complaint filed by the EEOC, Defendant filed an Answer specifically and categorically denying the substantive allegations and claims asserted by the EEOC, and raising various defenses.

B. In the interest of resolving this matter, and as a result of having engaged in

comprehensive negotiations, the EEOC and Defendant (the "Parties") have agreed that this action should be finally resolved by entry of this Decree. This Decree and compliance with this Decree shall not be construed as an admission by Defendant of (1) any liability or any violation of the rights of Avery Williams or of any other person; (2) violation of any order and/or law regarding Williams or any person; or (3) violation of any order, law, statute, duty or breach of any contract or any act of discrimination, harassment or retaliation whatsoever against Williams or any other person. Instead, Defendant specifically denies engaging in any wrongful or unlawful acts and is entering this Decree solely for the purpose of avoiding the time and expense involved in defending the claims alleged in this Civil Action.

C. This Decree is entered into by the EEOC and Defendant. This Decree shall be final and binding between the EEOC and Defendant, its directors, officers, managers, and successors and assigns (hereinafter collectively referred to as "Defendant").

D. The Commission and Defendant agree to the entry of this Decree, which shall fully and finally resolve all claims which were or could have been raised by the EEOC in Civil Action No.5:06-CV-1972, including back pay, front pay, non-pecuniary compensatory damages, liquidated damages, pre-judgment and post-judgment, interest, injunctive relief, attorney's fees, costs and any remedial action or other equitable relief arising out of said Civil Action. This Consent Decree shall not constitute an adjudication of or finding on the merits of the case and shall not be construed as a violation of Title VII by Defendant.

ORDER

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. Defendant is enjoined for the duration of this Decree from engaging in any employment practice which constitutes unlawful discrimination under Title VII. Specifically, Defendant is enjoined from creating, fostering or tolerating a work environment which discriminates based on race.
3. Defendant is enjoined from engaging in any employment practices which retaliate in any manner against any person, including but not limited to, Williams and Ramadan Guru (“Guru”), or any other person, because of that person's opposition to any practice believed to be unlawful under Title VII, 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 Title VII.
4. Defendant shall not divulge, directly or indirectly, except as required by law, or in response to a lawful subpoena or other legal process, to any employer or potential employer of Williams, any of the facts or circumstances related to the charge of discrimination against Defendant, or any of the events relating to his participation in the litigation of this matter.
5. Defendant shall expunge from the personnel files of Williams, any documents, pleadings, correspondence and related papers pertaining to the charge of discrimination filed by Williams with the Commission.
6. Defendant shall comply fully with all provisions of Title VII for the duration of this Decree. Nothing in this Decree, either by inclusion or exclusion, shall be construed to limit the obligations of Defendant under Title VII or the EEOC's authority to process or litigate any charge of discrimination which may be filed against Defendant in the future.

MONETARY RELIEF

Avery Williams

7. Without admitting liability, and instead, expressly denying any liability, Defendant

agrees to pay the gross sum of \$145,000.00 to or on behalf of Williams in full and final settlement of the claims against Defendant which were or could have been raised in the Commission's Civil Action:

(a) One check in the gross amount of \$84,406.77 will be made payable to Avery Williams as and for alleged non-compensatory damages related to the claims at issue in this litigation.

(b) One check in the gross amount of \$10,000.00, less all applicable deductions and withholdings, will be made payable to Williams as and for alleged wage loss damages related to the claims at issue in this litigation.

(c) One check in the gross amount of \$50,593.23 will be made payable to the law firm of Shapero & Roloff as and for Williams' alleged attorneys' fees and expenses.

(d) Defendant will mail a photocopy of the checks to the EEOC, to the attention of Donna L. Williams-Alexander, Trial Attorney, EEOC, within five (5) days of transmission of the checks to Williams' attorneys. In the event that Defendant does not make the payment as designated in the manner set forth in this Paragraph, the Court will enter a judgment for the entire amount remaining due, plus costs and interest to be paid at the legal rate.

Ramadan Guru

8. Without admitting liability, and instead, specifically denying liability, Defendant agrees to pay the sum of \$5,000.00 to Guru in full and final settlement of the claims against Defendant which were or could have been raised by the Commission in this Civil Action. Defendant shall send a check in the gross sum of \$5,000.00, as payment hereunder within fourteen (14) days after counsel for Defendant receives a signed and journalized Decree, a copy of the private written settlement agreement between Defendant and Guru signed by Guru, and an IRS W-9 form signed by Guru. The check will be made payable to Guru and will be transmitted to him by

certified mail return receipt requested or via special delivery. Defendant will mail a photocopy of the check to the EEOC, to the attention of Donna L. Williams-Alexander, Trial Attorney, EEOC, within five (5) days of transmission of the check to Guru. In the event that Defendant does not make the payment as designated in the manner set forth in this Paragraph, the Court will enter a judgment for the entire amount remaining due, plus costs and interest to be paid at the legal rate.

POSTING OF NOTICE

9. Within ten (10) business days after entry of this Decree, or as soon as practicable, thereafter, but no later than thirty (30) business days thereafter, Defendant agrees to post same-sized copies of the Notice attached as Exhibit 1 to this Decree on a bulletin board(s) located at its North Canton, Ohio, location, usually used by Defendant for communicating with employees. The notice shall remain posted for one (1) year from the date of entry of this Decree. Counsel for Defendant shall provide a copy of the Notice, and an indication of the date and location(s) of its posting(s), to the EEOC's Cleveland, Ohio Field Office, attention: Donna L. Williams-Alexander, within ten (10) days of the posting(s). Defendant shall permit a representative of the EEOC to enter Defendant's North Canton, Ohio premises for purposes of verifying compliance with this Paragraph at any time during normal business hours. Defendant shall take all reasonable steps to ensure that the posting(s) are/is not altered, defaced or covered by any other material. Should the posted notice(s) become defaced, removed, marred, or otherwise illegible, Defendant agrees to as soon as practicable post a legible copy in a manner as described herein.

NON-DISCRIMINATION AND ANTI-HARASSMENT POLICIES AND COMPLAINT PROCEDURES

10. Defendant agrees to maintain and enforce written policies concerning race discrimination, harassment and retaliation that conform with applicable law as follows:

- (a) The policy should be drafted in plain and simple language, stating a strong

commitment to a work place free of race discrimination, harassment and retaliation, or other violation of Title VII;

(b) The policy should make clear that a failure to follow Defendant's policy against unlawful race discrimination, harassment and retaliation will not be tolerated;

(c) The policy should contain a complaint procedure advising employees to come forward with complaints regarding violations of the Defendant's policy or policies against discrimination, harassment and retaliation, and identify appropriate individual(s) to whom employees may report complaints about unlawful race discrimination, harassment or retaliation. The policy should also provide assurances that complainants shall not be subjected to retaliation and provide an assurance of non-retaliation for persons who report their belief that they have been subjected to unlawful race discrimination, harassment or retaliation; and

(d) The policy should provide employees assurance that Defendant will investigate all allegations of unlawful discrimination, harassment and retaliation; and

(e) The policy should provide for consequences up to and including discharge of an employee or supervisor or manager who violates the policy.

11. The aforementioned policy shall be distributed to all of Defendant's employees not already in possession of it, at its North Canton, Ohio location, within ninety (90) days after entry of this Decree. Defendant will distribute said policy to all newly hired individuals within a reasonable time after their hire.

12. Within ninety (90) days after entry of this Decree, Defendant agrees to advise Donna L. Williams-Alexander, Trial Attorney, EEOC, that its policy or policies against race discrimination, harassment and retaliation have been distributed to current employees either in written or electronic form and that new employees will receive these policies and an opportunity to acknowledge receipt. Defendant will retain copies of any acknowledgment of receipt form for an

employee in the employee's personnel file.

13. Defendant agrees that it will, annually, for the duration of the Decree, send a copy of its policy or policies against discrimination, harassment and retaliation to its employees either in written or electronic form.

MANAGEMENT ACCOUNTABILITY

14. For the duration of this Decree, Defendant shall promote management and/or supervisor accountability concerning race discrimination/ harassment and retaliation prohibited under Title VII by the following conduct:

(a) Providing mandatory annual anti-discrimination training to all of its supervisory and managerial personnel as set forth in Paragraph 15;

(b) Disciplining, up to and including discharge, any supervisor or manager who violates Defendant's policy or policies against race discrimination, harassment or retaliation for engaging in protected activity under Title VII;

(c) Imposing on all managers and supervisory personnel a duty to administer their work areas to ensure compliance with Defendant's policy or policies against race discrimination, harassment or retaliation for engaging in activity protected under Title VII; and

(d) Requiring all managers and supervisors to report any incidents and/or complaints of race discrimination/harassment or retaliation for engaging in activity protected under Title VII of which they become aware to the appropriate responsible person identified in Defendant's policies and procedures regarding same.

TRAINING

15. For the duration of this Decree, Defendant agrees to provide live training regarding an employee's rights under Title VII, and the employer's obligations under Title VII, with an emphasis on what constitutes unlawful race discrimination in the workplace, how to keep

Defendant's workplace free of such forms of discrimination, and what constitutes unlawful retaliation on the following terms:

a. Defendant agrees to provide such training sessions to all of its employees, managers and supervisors who work at its North Canton, Ohio location by conducting a live training seminar each year;

b. During each training session, an upper management employee will make a statement regarding the consequences for engaging in unlawful race discrimination, harassment and retaliation and emphasize Defendant's commitment to the prevention of unlawful race discrimination, harassment and retaliation under Title VII; and

c. The first training session shall take place within six (6) months of entry of this Decree and, thereafter, annually for the duration of this Decree.

16. Defendant agrees to provide the EEOC with copies of pamphlets, brochures, outlines or other written materials provided to the participants of the training sessions.

17. Defendant agrees to notify EEOC Trial Attorney Donna L. Williams-Alexander, in writing within fifteen (15) business days after the training sessions have occurred, that the training has taken place and that the required personnel have attended. Such notification shall include: (i) the dates, location and duration of the training session; (ii) a copy of the registry of attendance, which shall include the name and position of each person in attendance; and (iii) a listing of all current employees, including temporary employees, as of the date of the training.

RECORD KEEPING

18. For a period of five (5) years following entry of this Decree, Defendant shall maintain and make available for inspection and copying by the Commission, records of each complaint of any incident of race discrimination, harassment and retaliation made by any employee at its North Canton, Ohio location. Defendant shall maintain a summary of each complaint report

including the date the complaint was made, the name of the complainant (if known), the allegations contained in the complaint, and any necessary corrective action Defendant took in response to the complaint.

19. Defendant shall make all documents or records referred to in Paragraph 18, above, available for inspection and copying within fifteen (15) business days after the EEOC so requests. In addition, Defendant shall make available for interview all managers and supervisors within Defendant's employ whom the EEOC reasonably requests for purposes of verifying compliance with this Decree and shall permit a representative of the Commission to enter Defendant's North Canton, Ohio premises for such purposes with reasonable advance notice by the EEOC to Defense counsel of record.

20. Nothing contained in this Decree shall be construed to limit any obligation Defendant may otherwise have under Title VII or any other law or regulation.

REPORTING

21. Defendant shall furnish to the EEOC the following written reports annually for a period of five (5) years following entry of this Decree. Each such report shall be submitted to Donna Williams-Alexander, EEOC Trial Attorney, and shall contain:

a. A summary of the information recorded by Defendant pursuant to Paragraph 18, including the name of the complainant (if known), the allegation of the complaint and the action taken by Defendant in response; and

b. A certification by Defendant that the Notice required to be posted in Paragraph 9, above, remained posted during the entire one (1) year period required under this Decree.

DISPUTE RESOLUTION

22. In the event that the EEOC believes that Defendant has failed to comply with any provision of this Decree, the EEOC shall notify counsel of record for Defendant, of the alleged non-

compliance within twenty (20) days of the alleged non-compliance and shall afford Defendant twenty (20) business days to remedy the non-compliance or to satisfy the EEOC that the alleged non-compliance has been rectified. If the alleged non-complying party has not remedied the alleged non-compliance within twenty (20) business days, the complaining party may apply to the Court for appropriate relief.

MISCELLANEOUS PROVISIONS

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

24. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, officers, assigns, and successors of Defendant in their capacities as representatives, agents, directors and officers of Defendant, 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.

25. This Decree shall fully and finally resolve all claims which were or could have been raised by the EEOC in its Complaint and Amended Complaint in Civil Action No. 5:06-CV-1972.

26. This Consent Decree shall be filed in the United States District Court for the Northern District of Ohio and shall continue to be in effect for a period of five (5) years. Any application by any party to modify or vacate this Decree during such period shall be made by motion to the Court on no less than thirty (30) days notice to the other party.

27. The Court retains jurisdiction over this case in order to enforce the terms of the Consent Decree for its duration.

28. This Decree shall expire by its own terms at the end of five (5) years from the date of entry, without further action by the Parties.

~~29. The Clerk of the District Court is hereby directed to send a file-stamped copy of this~~
Consent Decree to counsel of record.

(5:06CV1972)

Date: April 21, 2008

s/John R. Adams

JUDGE JOHN R. ADAMS
UNITED STATES DISTRICT COURT

EXHIBIT 1

NOTICE TO ALL MULLINAX FORD OF NORTH CANTON EMPLOYEES

This Notice is being posted pursuant to a Consent Decree entered by the U.S. District Court, Northern District of Ohio in EEOC v. Mullinax Ford North Canton, Inc. d/b/a Mullinax Ford North Canton, Civil Action Number 5:06-CV-1972, resolving a lawsuit filed by the Equal Employment Opportunity Commission ("EEOC") against Mullinax Ford North Canton, Inc. d/b/a Mullinax Ford North Canton ("Mullinax Ford").

Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, et seq., as amended, ("Title VII"), prohibits discrimination against employees and applicants for employment based upon race, color, sex, religion or national origin. Title VII further prohibits retaliation against employees or applicants who avail themselves of their rights under Title VII by engaging in protected activities, such as opposing employment practices believed to be discriminatory, filing a charge of discrimination and/or testifying or participating in a Commission investigation. The EEOC is a federal agency which investigates charges of unlawful employment discrimination. The EEOC has authority to bring lawsuits in Federal Court to enforce Title VII.

In its lawsuit, the EEOC alleged that Defendant discriminated against several employees on the basis of race, (Black), and by subjecting them to different terms and conditions of employment and a racially hostile work environment. The Commission further alleged that Defendant retaliated against one of the Black employees after he filed a charge of race discrimination with the EEOC. Mullinax Ford categorically and unequivocally denies engaging in these or any other wrongful or unlawful acts.

To resolve the case, Mullinax Ford and the EEOC have entered into a Consent Decree which provides, among other things, that: (1) Mullinax Ford provide monetary relief; (2) Mullinax Ford will not discriminate on the basis of race; (3) Mullinax Ford will not retaliate against any person because he or she has opposed any practice made unlawful by Title VII, filed a charge of discrimination, participated in any Title VII proceeding, or asserted any rights under the Consent Decree; and (4) Mullinax Ford will train all employees at its North Canton, Ohio location, concerning the federal laws prohibiting race discrimination, harassment, unlawful retaliation and the Company's policies on these matters.

If you believe you have been discriminated against, you may contact the EEOC at (216) 522-7454. 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 (1) 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: Associate Regional Attorney, EEOC Cleveland Field Office, AJC Federal Office Building, 1240 East Ninth Street, Suite 3001, Cleveland, Ohio 44199.

By: _____
For: Equal Employment Opportunity
Commission

By: _____
For: Mullinax Ford North Canton, Inc.

