

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. )  
)  
BARRY DAVIS, and ANCHOR INN, )  
LLC, d/b/a KOKOAMOS ISLAND BAR & )  
GRILL, )  
)  
Defendants. )  
\_\_\_\_\_ )

CIVIL ACTION NO. 2:07cv430

**DECREE**

1. On September 20, 2007, the United States filed its complaint in this action alleging that the Defendants violated Title II of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000a et seq., by discriminating against African-Americans.

2. Defendants Barry Davis and Anchor Inn LLC, (hereinafter "Defendants") are doing business as "Kokoamos Island Bar & Grill" (hereinafter "Kokoamos" or "the subject property"). Kokoamos is a restaurant and nightclub located at 2100 Marina Shores Drive in Virginia Beach, Virginia.

3. In the Complaint, the United States alleges that the Defendants have engaged in a pattern and practice of denying to African-American persons, on the basis of race, the full use and enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of Kokoamos on the same basis as such are provided to non-black members of the general public through the adoption and implementation of the dress code.

4. Defendants deny each and every of the material allegations.

5. The parties stipulate that, at all times relevant to the allegations of the United States, Kokoamos is a “place of public accommodation” within the meaning of 42 U.S.C. § 2000a (b) (3), and that its operations “affect commerce” within the meaning of 42 U.S.C. § 2000a (c).

6. The United States and Defendants have agreed that, in order to avoid protracted and costly litigation, this case should be resolved without further litigation, through the terms of this Decree. Therefore, without a trial, any admissions, or adjudication on the merits, the United States and Defendants have agreed to the entry of this Decree.

It is hereby, **ORDERED, ADJUDGED, and DECREED** that:

**I.**

7. All provisions of this Decree shall apply to Barry Davis in the conduct of business at Kokoamos and to Anchor Inn, LLC d/b/a Kokoamos. All provisions of this Decree shall also apply to the employees and agents of same, to all successors to the extent that their cooperation is required in implementing this Decree, and to anyone acting in whole or in part under the direction of any Defendant in connection with the subject property.

**II.**

8. Defendants, Defendants’ agents, employees, successors, and all other persons in active concert or participation with them in the ownership and operation of the subject property are enjoined from denying to any person, because of race or color, the full and equal enjoyment of all of the goods, services, facilities, privileges, advantages and accommodations of such establishment. Such conduct includes: (a) failing or refusing on account of race or color, to admit any person to the premises of such establishment; (b) discriminating on the basis of race or

color in the terms, conditions, or privileges of admission to such establishment, or, because of race or color, providing different information about the terms, conditions, or privileges of admission; and (c) denying or deterring admission to such establishment to any person because of race or color, by adopting any practices or procedures in the management of such establishment designed to discourage persons on the basis of race or color from patronizing such establishment.

### III.

9. Within sixty days of the date of entry of this Decree, Defendants and Defendants' employees or agents with responsibility for the management, security and provision of public services at the subject property shall attend a program of educational training concerning the substantive provisions of Title II and their responsibilities under the law. This training, which shall be no less than two hours in duration, shall be conducted by an organization, approved by the United States, with experience in providing training on civil rights issues. The costs of this program shall be borne by Defendants. All persons attending such a program shall have their attendance certified in writing by the person conducting the educational program.

10. Defendants shall, no later than ten days after entry of this Decree, provide each of their employees, agents, partners, or any other person subject to the provisions of this Decree in any capacity, a copy of this Decree. The Defendants shall direct each such employee, agent, partner, or other person covered by this paragraph to review and read a copy of this Decree. Each employee, agent, partner, or other person covered by this paragraph shall sign a statement in the form of Attachment A, acknowledging that he or she has read and understands this Decree, and declaring that he or she will perform his or her duties in accordance with this Decree. New employees shall be provided a copy of this Decree when their employment commences, shall be

directed to review and read a copy of this Decree, and shall sign a statement in the form of Attachment A no later than five days following their first day of employment.

11. For one year from the date of entry of this Decree, Defendants shall place on the homepage of the Kokoamos website, and when placing advertisements in television, newspaper, telephone book, or internet, include information indicating that the subject property is open to all members of the public on an equal basis, without regard to race, color, religion, or national origin. In addition, for one year from the date of entry of this Decree, Defendants shall, in any month when placing radio advertisements, include in at least thirty of the radio advertisements per month information in the advertisements indicating that the subject property is open to all members of the public on an equal basis without regard to race, color, religion, or national origin; if less than thirty radio advertisements are placed in a particular month, each radio advertisement placed shall include information indicating that the subject property is open to all members of the public on an equal basis without regard to race, color, religion, or national origin.

#### IV.

12. To the extent that Defendants adopt, enforce, or otherwise use a dress code with respect to admission to the subject property, such code must be in writing, must clearly convey what manner of dress is required and what specific types of apparel are prohibited, and must be posted and prominently displayed outside all entrances to the subject property in clear view of prospective patrons. A copy of the proposed dress code(s) shall be provided to the United States for review and approval within fifteen days of the date of entry of this Decree. The United States shall have fifteen days from the date of receipt of the proposed dress code to review and comment on provisions of the dress code before it shall take effect. Once the United States has

approved the dress code, any proposed future changes in this code during the duration of this Decree must be provided by facsimile and next-day delivery to the United States for its review and comment at least fifteen days before being implemented. The proposed changes shall be considered approved upon the expiration of the fifteenth day unless Defendants receive a written objection from the United States within the fifteen-day notice period. To the extent the United States objects to any changes to the dress code proposed in accordance with this paragraph, and the parties cannot resolve the dispute among themselves, such dispute shall be submitted to the Court in accordance with the dispute resolution provisions of paragraphs 29-30.

13. Nothing in this Decree shall prevent the management of the subject property from refusing entry to or removing anyone who engages in violent, indecent, profane, boisterous or unreasonably loud or otherwise disorderly conduct, provided that the management of the subject property do so in a manner that does not discriminate on the basis of race.

V.

14. Within fifteen days of the date of entry of this Decree, Defendants shall erect and maintain at each public entrance to the subject property a printed sign stating that the establishment is open to all members of the public without regard to race or color. Such sign shall be printed in dark letters on a contrasting background and shall be located and maintained in a place that is well-lit and clearly visible to all patrons as they enter the premises. Such sign shall include a statement that any person who believes he or she has been discriminated against on the basis of race or color may speak immediately with a manager, and that if he or she disagrees with the manager's decision, may file a written complaint and/or may call the United States Department of Justice at (800) 896-7743 Ext. 997 and/or Defendants' complaint

department at (757) 481-3388 (or other appropriate current number). The text for such sign, and the size of the text, is specified in Attachment B.

15. Defendants shall institute policies that ensure that an individual in a supervisory position is available to speak with any patron who is denied access. That individual shall have the right to permit the patron to enter. If that individual still denies access to the patron, the individual shall offer the patron a complaint form, similar to that in Attachment C. All individuals in a supervisory position shall at all times have access to a supply of the complaint forms in the form of Attachment C. The individual may ask to take a picture of the patron who is complaining, but the individual may not require the patron to allow the picture.

16. Defendants shall establish and maintain for the duration of this Decree a system of accepting, processing and investigating any subsequent complaints (i.e., those received after a patron has been denied access and has left the premises) that a patron was denied access because of his or her race or color.

17. Within 30 days of the receipt of a written complaint, Defendants shall notify the Department of Justice of the complaint and, if requested by the Department of Justice, shall provide the Department of Justice with all documents, photographs, videos and other information related to the complaints.

## VI.

18. Defendants, in consultation with the United States, shall develop and implement a testing program to audit and monitor the Defendants' compliance with federal public accommodations laws and this Decree at the subject property. The testing program will consist of three paired tests of the subject property in each year of this Decree, for a total of 12 paired

tests. Defendants shall bear all costs, fees, and expenses associated with the development and implementation of this testing program. The tests shall be designed to determine whether Defendants are providing equal treatment and access to black and non-black patrons at the subject property.

19. The test procedures shall be developed, and the tests conducted, by an independent company or organization (“Testing Contractor”), approved by the United States, that has expertise in conducting paired testing for potential civil rights violations, including public accommodations, and is wholly independent of Defendants.

20. Defendants shall enter into a contract with the Testing Contractor that is consistent with the terms of this Decree within ninety (90) days after the entry of this Decree. The contract shall oblige the Testing Contractor to provide an adequate number of trained individuals to serve as testers and to conduct the tests described in paragraph 18.

21. Test procedures developed by the Testing Contractor shall be submitted to the United States for approval prior to the beginning of the testing program.

22. At no time shall any employee, agent or officer of the subject property be provided with any information concerning the location, procedure or test plan prior to the completion of the test. At no time shall the Testing Contractor disclose to any employee, agent, or officer of Defendants the identities of individual testers, or any information that would reveal the identities of individual testers; this provision ensures that testers can continue to be used on compliance tests without compromising the integrity of the testing process.

23. The results of all tests conducted by the Testing Contractor pursuant to this section, along with supporting documentation, shall be reported to Defendants and to the United

States simultaneously within thirty (30) days of the conclusion of completed tests. The Testing Contractor, however, need not report its results within thirty days if follow-up tests are required to verify a testing result and premature reporting of earlier results would compromise the testing process. Where testing results indicate a possible violation of this Decree, Defendants shall conduct an investigation of the facts and circumstances underlying such conduct within thirty (30) days of receipt of the testing evidence. Within fifteen (15) days of the completion of Defendants' investigation, Defendants shall provide the United States with a report containing the investigation results and Defendants' conclusions, recommendations and timetable for implementation of appropriate actions. Defendants shall implement these recommendations within fifteen (15) days, unless the United States objects, in which case the parties shall use the dispute resolution procedures described in paragraphs 29-30.

24. The United States may provide the Testing Contractor with any information received about customer complaints with the exception of information that would specifically identify the individuals making complaints.

25. The United States may also conduct testing at the subject property for the purpose of determining whether Defendants are violating the provisions of Title II of the Civil Rights Act of 1964 and the terms of this Decree.

## VII.

26. The Defendants shall, no later than 75 days after the date of entry of this Decree, serve a report on the United States evidencing their compliance with this Decree.<sup>1</sup> This report

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<sup>1</sup> Due to significant security-related delays of U.S. mail deliveries to the Department of Justice, all documents or other communications required by this Decree to be sent to counsel for the United States shall be sent by facsimile (202-514-1116) or by overnight mail to: Chief,



shall include the following:

- a. A photograph of each public entrance to the subject property clearly showing the signs required under paragraphs 12 and 14 of this Decree;
- b. A list of all advertisements covered by paragraph 11 of this Decree, made public in any manner since the entry of this Decree, together with representative samples of such advertisements;
- c. The statements signed by any and all employees pursuant to paragraph 10 of this Decree.
- d. Written certification by the person conducting the educational program referred to in paragraph 9.

27. Six months after the date of entry of this Decree, and every six months thereafter for four years from the date of entry of this Decree,<sup>2</sup> the Defendant shall serve upon the United States a written report evidencing continuing compliance with this Decree. This report shall contain the following information:

- a. Representative samples of all advertising for the previous one-year period, as required by paragraph 11 above;
- b. Sworn employee statements of new employees as required by paragraph 10;
- c. Information regarding any change in name or the location of the Defendants' operation of restaurants or nightclubs, including the address of any new location

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Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 1800 G. St., NW, Suite 7032, Washington, D.C. 20005.

<sup>2</sup> Except that the last report shall be submitted one month before the four year anniversary of the Decree.

and the dates of operation at that address;

- d. Notification of any new ownership or management interest Defendant Anchor Inn, LLC has acquired or developed in any place of public accommodation, as defined in Title II of the Civil Rights Act of 1964, during the preceding one-year period. Such notification shall include the name of the establishment in which Defendant has acquired or developed such interest, the address of such establishment, the goods and/or services provided by such establishment, and the dates of operation of such establishment;
- e. A copy of any changes to the dress code adopted during the reporting period pursuant to paragraph 12.
- f. Notification of whether, during the preceding six-month period, the Defendants have either ceased operating, or have licensed any business name to others for the purpose of operating the subject property.

28. Defendants shall maintain all records relating to implementation of and compliance with all provisions of this Decree. Upon request, the Defendants shall provide the United States with copies of any records maintained as required by this Decree.

#### VIII.

29. If differences arise between the parties regarding Defendants' compliance with, interpretation of, or implementation of the terms of this Decree, the parties shall endeavor to resolve such differences among themselves before seeking the intervention of the Court.


30. In the event of a failure by Defendants to perform in a timely manner any act required by this Decree or otherwise to act in conformance with any provision thereof, and if the

voluntary dispute resolution procedure described in paragraph 29 is unsuccessful, the United States may move this Court to impose any remedy authorized by law or equity, including but not limited to an order requiring performance of such act or deeming such act to have been performed, and an award of any costs and attorney's fees that may have been occasioned by the Defendants' violation or failure to perform.

**IX.**

31. This Court shall retain jurisdiction of this case for purposes of enforcing this Decree, which shall be effective for a period of 48 months following the date of entry by the Court, ~~after which time the case shall be dismissed with prejudice.~~ The United States may move the Court to extend the duration of the Decree in the interests of justice.

It is so **ORDERED** this 10<sup>th</sup> day of March, 2008.

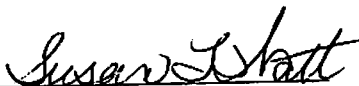
  
\_\_\_\_\_  
Raymond A. Jackson  
United States District Judge  
UNITED STATES DISTRICT JUDGE

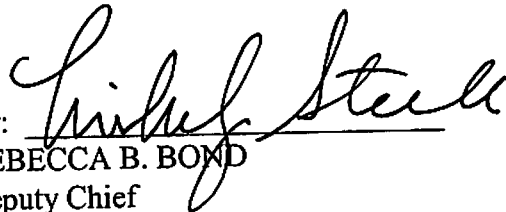
WE ASK FOR THIS:

**For the United States:**

CHUCK ROSENBERG  
United States Attorney  
Eastern District of Virginia

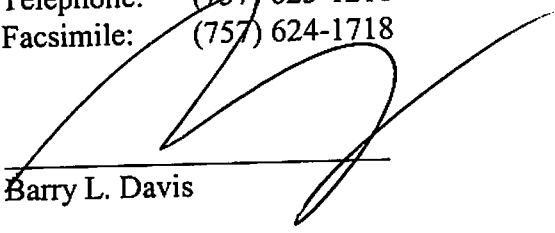
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\_\_\_\_\_  
Barry L. Davis

**ATTACHMENT A**

I have reviewed and read a copy of the Decree entered in United States of America v. Barry Davis and Anchor Inn, LLC, d/b/a Kokoamos, Eastern District of Virginia, Civil Action No. 2:07cv430. I understand the terms of that Decree, and I further understand that Federal law guarantees that no person may be denied, on account of their race or color, the full use and enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place such as Kokoamos restaurant and nightclub. With that understanding, I agree that, as a condition of my providing goods and/or services on behalf of Kokoamos or any other place of public accommodation owned or managed by Barry Davis or Anchor Inn, LLC, I shall not discriminate in any manner on account of race or color in the provision of such goods and/or services. If I violate the terms of the Decree, I understand that I may be fired or subject to other disciplinary action.

I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Home Address

\_\_\_\_\_  
Home Telephone Number

**ATTACHMENT B**

**(See Attachment)**

**ATTACHMENT C**  
**COMPLAINT FORM**

Name:

Address:

Telephone No.:

E-mail address:

Date that you were refused admission to Kokoamos:

Time of day that you were refused admission to Kokoamos:

Reason(s) that the manager and/or doorman gave for refusing to admit you:

Name of the manager you talked with:

**NOTE: The manager may request your permission to take your picture for purposes of evaluating your complaint. However, you are not required to have your picture taken in order to make a complaint. You are also entitled to a copy of this complaint form and may contact the United States Department of Justice at 1-800-896-7743, Ext. 997 regarding your complaint.**

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To be filled out by Kokoamos

Name of manager:

Reason(s) for refusing entrance:



# NOTICE

**KOKOAMOS IS OPEN TO ALL MEMBERS OF THE PUBLIC  
WITHOUT REGARD TO RACE OR COLOR**

**IF YOU FEEL YOU HAVE BEEN  
UNLAWFULLY DENIED ACCESS**

**YOU MAY TALK TO A MANAGER NOW,  
AND/OR YOU MAY FILE A WRITTEN COMPLAINT OR CALL:**

**Kokoamos' Complaint Dept.  
(757) 481-3388**

**OR**

**United States Justice Department Housing and Civil Enforcement Section  
Civil Rights Division, 950 Pennsylvania Ave. Washington, D.C. 20530  
1-(800) 896-7743, Ex. 997**