

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

CITY OF BONITA SPRINGS, FLORIDA,)

Defendant.)
_____)

Civil Action No. 2:08cv936-FtM-UA-SPC

CONSENT DECREE

This action was brought by the United States against the City of Bonita Springs, Florida ("City") to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a), ("Title VII"), following receipt by the Department of Justice from the Equal Employment Opportunity Commission of a charge filed by Joseph W. Johnson ("Johnson"), an African-American employee of the City.

In its Complaint, the United States alleges that the City subjected Johnson to discrimination on the basis of his race by creating and/or maintaining a hostile work environment based on race that adversely affected the terms, conditions and privileges of Johnson's employment, in violation of Section 703(a) of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. §2000e-2(a).

The City denies that it has discriminated against Johnson on the basis of his race in violation of Title VII, and further avers that, if there were any acts by employees or patrons that were based on his race, the City took prompt corrective and remedial action to address same.

Nevertheless, the parties, desiring that this action be settled by appropriate consent decree and without the burden of protracted litigation, agree to the jurisdiction of this Court over the parties and the subject matter of this action. Subject to the Court's approval of this Consent Decree ("Decree"), the parties waive a hearing and findings of fact and conclusions of law on all issues, and further agree to the entry of this Decree as final and binding between themselves as to the issues raised in the United States' Complaint filed in this case and the matters resolved in this Decree.

This Decree, being entered with the consent of the parties, shall in no way constitute an adjudication or finding on the merits of the case, nor be construed as an admission by the City or a finding of any wrongdoing or violation of any applicable federal or state law or regulation.

As used in this Decree, the term "date of entry of this Decree" is defined as the date on which the Court grants final approval to and enters this Decree as a final order of the Court.

It is therefore, ORDERED, ADJUDGED AND DECREED as follows:

A. GENERAL RELIEF

1. The City, by and through its officials, agents, employees and all persons in active concert or participation with the City in the performance of employment or personnel functions, shall not engage in any act or practice that has the purpose or effect of unlawfully discriminating against any employee or potential employee of the City because of that individual's race.

2. The City, by and through its officials, agents, employees and all persons in active concert or participation with the City, shall not retaliate against or in any respect adversely affect Johnson or any other person because that person has opposed policies or practices that allegedly violate Title VII, has filed a charge with the Equal Employment Opportunity Commission, or

because of that person's participation in or cooperation with the initiation, investigation, litigation or administration of this case or this Decree.

3. The City's non-discriminatory employment policies and performance evaluations shall be applied such as to ensure a non-discriminatory working environment for all employees or potential employees, regardless of race; and such that all employees shall be expected to meet the same standards of performance and professionalism as all other employees, regardless of race. The City shall amend its policies and procedures prohibiting "Sexual Harassment and Other Unlawful Harassment" to include specific reference to a complaint procedure for racial harassment.

4. The City shall provide training with respect to Title VII's prohibitions against employment discrimination based on race to all supervisory personnel who are involved in hiring and selection procedures, evaluation of job performance and discipline of City employees. The City shall also provide separate training with respect to Title VII's prohibitions against employment discrimination based on race to all non-supervisory employees in the Parks and Recreation Department. Each training session shall last at least three hours, and shall be implemented within four months from the date of entry of this Decree. A description of each of the proposed training programs, along with all training materials, shall be submitted to counsel for the United States for review and approval prior to implementation of the training, and no later than two months from the date of entry of this Decree.

B. SPECIFIC RELIEF

5. In settlement of the claim of the United States for relief on behalf of Johnson, the City shall, within seven (7) days of the date of entry of this Decree:

- a. Offer to pay Johnson a monetary award in the amount of \$25,000, which shall be considered compensatory damages; and
- b. Offer to remove from Johnson's personnel file and any other City files any negative references pertaining to Johnson's complaints of racial discrimination, to the extent that any such documents exist. The City shall place any such documents into a separately maintained human resources litigation file. The City shall also place in that human resources litigation file a copy of this Decree with a cover memorandum indicating that the City considers the records to be void. Nothing in this Paragraph shall be construed to prevent the City from complying with any valid requests for public records made pursuant to applicable Florida law.

6. In order to receive the relief provided in Paragraph 5, above, Johnson must execute the Release attached hereto at Appendix B. If Johnson accepts the offer set forth in Paragraph 5, above, the City shall pay to Johnson the monetary award within two weeks of receiving the executed Release from Johnson. The City shall issue an IRS Form 1099, and any other appropriate tax forms, to Johnson to reflect this payment, and shall not deduct any employer or employee taxes from that amount. Johnson shall be responsible for paying any income taxes due. The payment shall be made payable to Johnson and sent to him, at the following address:

Mr. Joseph W. Johnson
11180 San Sebastian Lane
Bonita Springs, Florida 34135.

In order to accomplish the expungement set forth in Paragraph 5(b) above, the City shall submit to the United States, within thirty (30) days of receiving the executed Release from Johnson, a copy of the personnel file of Johnson and copies of any and all other relevant files and documents pertaining to Johnson. Upon identification by the United States of the appropriate documents, the City shall remove from Johnson's personnel file and any other City files any negative references pertaining to Johnson's complaints of racial discrimination, to the extent that any such documents exist. The City shall place any such documents into a separately maintained human resources litigation file. The City shall also place in that human resources litigation file a copy of this Decree with a cover memorandum indicating that the City considers the records to be void. Nothing in this Paragraph shall be construed to prevent the City from complying with any valid requests for public records made pursuant to applicable Florida law.

7. The City shall notify Johnson of the terms of this Decree within seven (7) days of its date of entry by mailing to him, by certified mail, return receipt requested, a copy of the letter in the form set forth in Appendix A and enclosing a copy of this Decree and a copy of the Release in the form set forth in Appendix B. The letter identified as Appendix A will inform Johnson that in order to accept the relief offered to him, he must return the executed Appendix B Release form to the City within 30 days of his receipt of the Appendix A letter.

C. **RECORD-KEEPING, REPORTING AND COMPLIANCE MONITORING**

8. The City will retain during the term of this Decree all documents, in paper or electronic form (including electronic mail), that come into its possession that are:

a. Related to complaints of racial discrimination or retaliation (formal or informal) made by employees against the City; and

b. Related to the training provided under this Decree.

9. The City shall provide written notice to counsel for the United States of any disciplinary or other adverse employment action proposed or taken against Johnson during the life of this Decree promptly after such action is proposed or taken. The United States shall have the right to inspect and copy all documents related to such action upon reasonable notice to the City without further order of this Court.

10. The United States may review compliance with this Decree at any time. As part of that review, the City will provide copies of any documents relevant to the City's compliance with this Decree upon the request of the United States, including but not limited to documents described in Paragraph 6, above.

D. DISPUTE RESOLUTION

11. The parties shall attempt to resolve informally any dispute that may occur under this Decree. The parties shall engage in good faith efforts to resolve the issue before seeking action by the Court. If the parties are unable expeditiously to resolve the issue, either party may move the Court for resolution, provided that written notice is first provided to the other party at least three business days in advance of taking such action.

E. JURISDICTION OF THE COURT

12. During the life of this Decree, the Court shall retain jurisdiction over this Decree for the purposes of enforcing its provisions, resolving any disputes that may arise between the parties under it and entering such orders as may be appropriate.

13. This Decree shall terminate two (2) years from the date of its entry without further order of the Court.

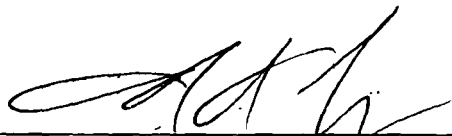
F. COSTS

14. The parties shall bear their own costs in this action, including attorney's fees.

G. SCOPE OF DECREE

15. This Decree sets forth the entire agreement between the United States and the City, and supercedes all other negotiations, representations or agreements, either written or oral, between the United States and the City.

DONE AND ORDERED this 21 day of September, 2009.



~~SHERI POLSTER CHAPPELL~~
UNITED STATES MAGISTRATE JUDGE
DISTRICT


Richard CAZZANO

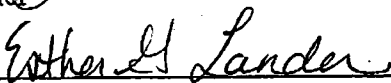
Agreed and Consented To:
On behalf of Plaintiff
The United States of America:


On behalf of Defendant
The City of Bonita Springs, Florida:


LORETTA KING
Acting Assistant Attorney General
Civil Rights Division

BY:


JOHN M. GADZICHOWSKI (WI Bar No. 1014294)
Chief



ESTHER G. LANDER (D.C. Bar No. 461316)
Deputy Chief


JEFFREY G. MORRISON (MO Bar No. 44401)
Senior Trial Attorney


HILARY J. FUNK (VA Bar No. 46872)
Senior Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW
Patrick Henry Building, Room 4613
Washington, DC 20530
Telephone: (202) 353-1845
Facsimile: (202) 514-1005
jeffrey.morrison@usdoj.gov

A. BRIAN ALBRITTON
United States Attorney

KYLE SCOTT COHEN
Assistant United States Attorney
2110 First Street, Suite 3-137
Fort Myers, Florida 33901
Phone: (239) 461-2200
Facsimile: (239) 461-2219


AUDREY VANCE, ESQ.
City Attorney
9101 Bonita Beach Road
Bonita Springs, Florida 34135

APPENDIX A
NOTICE LETTER

[Date]

Mr. Joseph W. Johnson
11180 San Sebastian Lane
Bonita Springs, Florida 34135

Re: *United States of America v. City of Bonita Springs, Florida*, Civil Action No.
2:08cv936-FtM-UA-SPC (M.D. Fla.)

Dear Mr. Johnson:

A Consent Decree has been entered settling a complaint of employment discrimination filed by the United States against the City of Bonita Springs, Florida ("City") based on a charge of employment discrimination you filed with the U.S. Equal Employment Opportunity Commission, Charge No. 15L-2006-00054.

Under the terms of the Consent Decree entered on _____, 2009, in the case of *United States of America v. City of Bonita Springs, Florida*, Civil Action No. 2:08cv936-FtM-UA-SPC (M.D. Fla.), you are being offered certain relief as settlement for your claim of employment discrimination against the City based on your EEOC charge, Charge No. 15L-2006-00054.

First, as a monetary award, you are being offered \$25,000 in compensatory damages.

Second, the City is offering to expunge from your personnel files any negative references pertaining to your complaint of race discrimination. The City will place any such documents into a separately maintained human resources litigation file and will also place in that human resources litigation file a copy of this Decree with a cover memorandum indicating that the City considers the records to be void.

This relief is being offered to you on the following condition: if you accept the relief, the City will require you to release it from all employment discrimination claims you may presently have against it arising out of this case and EEOC Charge No. 15L-2006-00054. If you decline the relief, the City will nevertheless have satisfied its obligation to the United States pursuant to the Consent Decree in the above-captioned case and the United States will not seek additional relief for you.

In order to obtain the offered relief, you must complete and return the enclosed Release form. The Release must be signed in the presence of a notary public and thereafter notarized.

If you accept the offered relief, the City will send you the appropriate monetary award within fifteen (15) days of its receipt of your Release. The City will also send you appropriate IRS form(s) with respect to the monetary award.

RETURN THE COMPLETED FORM IN THE ENCLOSED ENVELOPE ADDRESSED TO:

Audrey Vance, Esq.
City Attorney
9101 Bonita Beach Road
Bonita Springs, Florida 34135

IF YOU FAIL TO SUBMIT THE RELEASE FORM, AS DIRECTED IN THIS LETTER, WITHIN THIRTY (30) DAYS FROM YOUR RECEIPT OF THIS LETTER, YOU WILL FORFEIT YOUR RIGHTS TO ANY MONETARY OR OTHER RELIEF UNDER THE CONSENT DECREE.

A copy of the Consent Decree is enclosed. If you have any questions concerning this settlement, you may contact Jeffrey Morrison, attorney for the United States Department of Justice, at (202) 353-1845.

Sincerely,

Audrey Vance, Esq.
Attorney for the City of Bonita Springs, Florida

Enclosures

APPENDIX B

RELEASE

The United States of America v. City of Bonita Springs, Florida

For and in consideration of the acceptance of the relief, or any part of it, offered to me by the City of Bonita Springs, Florida pursuant to the provisions of the Consent Decree entered by the Honorable Sheri Polster Chappell, United States Magistrate Judge, on _____, 2009 in *United States of America v. City of Bonita Springs, Florida*, Civil Action No. 2:08cv936-FtM-UA-SPC, I, Joseph W. Johnson, hereby release and forever discharge the City of Bonita Springs, Florida, its current and future officials, employees and agents, of and from all legal and equitable claims of employment discrimination arising out of that action and EEOC Charge No. 15L-2006-00054, which accrued prior to _____, [date of entry of Consent Decree by the Court].

I understand that the relief granted to me in consideration for this Release does not constitute an admission by the City of Bonita Springs, Florida of the validity of any claim raised by me or on my behalf.

This Release constitutes the entire agreement between the City of Bonita Springs, Florida and me, without exception or exclusion.

I acknowledge that a copy of the Consent Decree in this action has been made available to me.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Date: _____
Joseph W. Johnson

Social Security Number _____ - _____ - _____

Subscribed and sworn to before me this ____ day of _____, 2009.

Notary Public

My commission expires: _____