

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Civil Action No. 2:13-cv-14076
Hon. George Caram Steeh

Plaintiff,

v.

THE PINES OF CLARKSTON, INC.,
Defendant.

CONSENT DECREE

The United States Equal Employment Opportunity Commission (“Commission” or “EEOC”) filed this action against The Pines of Clarkston, Inc. (hereinafter “Pines”) to enforce the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-17 (“ADA”). The EEOC alleges that Pines violated the ADA by discharging Jamie Holden because of her disability in violation of the ADA.

The Commission and Pines agree that this action should be resolved by entry of this Decree. The parties do not object to the Court’s jurisdiction over this action and waive their right to a hearing and the entry of findings of fact and conclusions of law. The Court hereby finds, based on the pleadings and the record as a whole, that: (1) the Court has jurisdiction over the parties and the subject matter of this action; (2) implementation of this Decree will advance the purposes and provisions of the ADA; and (3) this Consent Decree resolves all matters and claims in controversy in this lawsuit as provided in paragraphs 1 through 21 below.

Therefore, it is hereby ORDERED, ADJUDGED AND DECREED:

1. Pines and its officers, owners, agents, employees and successors at each Pines facility shall not discriminate against qualified individuals on the basis of disability in regard to hiring and job-application procedures. This includes ending the current practice of asking job applicants questions intended to elicit information about the applicant's disability prior to an offer of employment.

2. Pines and its officers, owners, agents, employees and successors at each Pines facility shall make reasonable accommodations to the known physical or mental limitations of otherwise qualified individuals with disabilities who are applicants or employees, unless it can demonstrate that such an accommodation would impose an undue hardship on the operation of the business.

3. Pines and its officers, owners, agents, employees, and successors at each Pines facility are enjoined from: (a) discriminating against any employee on the basis of disability; and (b) retaliating against any employee because s/he: (i) opposes discriminatory practices made unlawful by the ADA; (ii) files a charge of discrimination or assists or participates in the filing of such a charge; or (iii) assists or participates in an investigation or proceeding brought under the Federal laws prohibiting discrimination or retaliation.

MONETARY RELIEF

4. Pines will pay monetary relief to Jamie Holden in the gross amount of \$42,500.00. This amount represents \$21,250.00 for back pay and \$21,250.00 in non-pecuniary compensatory damages. Pines will not deduct from any amount the employer's share of any costs, taxes or social security required by law to be paid by Pines. Further, Pines will not withhold any amounts from payments of compensatory damages. This sum shall be made payable to Jamie Holden and mailed to her care of her attorney, Alan Posner.

5. Within 5 days after this check has been mailed to Holden's counsel, Pines shall mail a copy of the check to Laurie A. Young, Regional Attorney, care of Dale Price, Trial Attorney, EEOC, 477 Michigan Avenue, Room 865, Detroit, Michigan 48226.

CORRECTIVE POLICIES AND PRACTICES

6. Pines shall post the Notice (attached as Attachment A) in the same type, style, and size for the duration of this Decree, in a conspicuous place in each Pines facility where employee notices are posted, along with a copy of Pines's Policies and Procedures discussed below.

7. Once a year for 3 years from the effective date of this Decree, Pines shall train all Company employees including managers, officers, owners, directors and human resources personnel at every Pines facility on disability discrimination, including the ADA's prohibition on retaliation and the Company's duty to not ask questions of applicants which are likely to elicit information about a disability, in accordance with the following:

A. The first training shall occur within 90 days of the date this Decree is entered, with each subsequent training completed 11 to 13 months thereafter. Each year, the trainer shall conduct one live training session of no less than three (3) hours, plus adequate time for questions and answers, for, at minimum, managers, officers, and directors. Non-managerial employees shall attend the live training or, if the training is videotaped, a showing of the videotape. All employees shall register when they attend training, and Pines shall retain the registry for the duration of this Decree and forward a copy of all attendees to Laurie A. Young, Regional Attorney, care of Dale Price, Trial Attorney, EEOC, 477 Michigan Avenue, Room 865, Detroit, Michigan 48226.

B. At least 60 days prior to each annual live training, Pines shall submit to the EEOC the name(s), address(es), telephone number(s), and resume(s) of the proposed trainer(s), the

training dates, and an outline of the training contents, to the Commission's Regional Attorney at the address listed above. Alternatively, the Commission may provide reasonable input into the training proposed by Pines no later than 20 days prior to the training.

C. A Commission representative may, with reasonable notice, attend and fully participate in the training.

8. Within 30 days of the date of entry of this Decree, Pines shall develop written policies applicable to all Pines facilities concerning disability discrimination to conform with the law, and when completed shall submit a copy of these policies to the Commission's Regional Attorney at the address listed above. The written policies must include at a minimum:

- A. The obligation to provide, to both applicants and employees with disabilities, a reasonable accommodation that complies with the ADA;
- B. The obligation to engage, with both applicants and employees with disabilities, in the interactive process required by the ADA to determine whether a reasonable accommodation is available;
- C. Definitions of disability discrimination with examples, including failure to provide reasonable accommodation, and a statement that such misconduct, by anyone, is illegal and will not be tolerated;
- D. A statement encouraging employees to report to a manager if they believe they have been discriminated against, along with the names and telephone numbers of managers to whom employees can make such a report;
- E. Assurances that Pines will investigate these reports promptly and fairly, and will take appropriate corrective action to make victims whole and to eradicate the disability discrimination, along with a description of the consequences that will be imposed upon

violators of the policies;

F. Assurances of maximum feasible confidentiality for persons who believe that they have been discriminated against;

G. An assurance of non-retaliation for persons who believe they have been discriminated against, and for witnesses.

H. An assurance to applicants and employees that Pines will not conduct unlawful medical inquiries, and will educate employees about their rights regarding medical inquiries under the ADA.

The policies shall be distributed to each current employee at every Pines facility within 90 days of the date of this Decree and to each new employee when hired.

9. Pines shall develop procedures to address complaints of disability discrimination, including complaints about medical inquiries from applicants and employees, applicable to all Pines facilities. The procedures must include at a minimum:

A. Pines shall designate two managers to receive complaints of discrimination from employees and to initiate an investigation.

B. Pines shall promptly and appropriately investigate all employee complaints of disability discrimination or retaliation by interviewing all potential victims and witnesses, taking notes, and making a finding about whether the misconduct occurred. Pines shall take immediate appropriate corrective action to make disability discrimination and retaliation victims whole, and to discipline those who engaged in the misconduct.

C. Pines shall institute a procedure to evaluate managers on their performance in responding to employee complaints of disability discrimination or retaliation. A manager's failure to enforce the disability discrimination policy shall result in discipline.

D. Pines's Human Resources Department will maintain in a separate file complete records of all medical inquiries made by personnel at each Pines facility to applicants and employees, including a record detailing the substance of the inquiry, by and to whom it was made, the context (including date and time) and an explanation for why the inquiry was made.

These procedures also shall be distributed to each current employee at every Pines facility within 90 days of the date of this Decree and to each new employee when hired.

REPORTING BY PINES AND ACCESS BY EEOC

10. Pines shall submit the following in writing and in affidavit form to the Commission's Regional Attorney at the address provided above, beginning 90 days from the date of this Decree, and thereafter every 6 months for the duration of the Decree:

- A. A copy of the policies and procedures required above. (see ¶¶ 8-9 above);
- B. The name, address, position, social security number, and telephone number of every applicant and employee at each Pines facility who complained about disability discrimination, including medical inquiries or retaliation, during the period preceding the report to the EEOC. The first report shall cover the first six months from the date of the Decree. The nature of the complaint, Pines's investigatory efforts and/or engagement in the interactive process and corrective action taken/accommodation provided, if any, also shall be specified;
- C. The registry of persons attending the training required above, and a list of current personnel employed by Pines on the days of the training;
- D. Confirmation that (i) the Notice required above (see ¶ 6) was posted, and the locations where it was posted; and (ii) the policies and procedures required above were distributed to each current and each new Company employee.

11. The Commission shall have the right during regular business hours, hereby

defined as Monday through Friday 9:00 am – 5:00 pm ET, to enter and inspect each Pines premises to ensure compliance with this Decree.

COSTS AND DURATION

12. Each party shall bear its costs and attorney's fees incurred as a result of this action.
13. Absent extension, this Decree shall expire by its own terms at the end of four (4) years without further action by the Parties.

PENALTIES FOR NON-COMPLIANCE

14. This Court shall retain jurisdiction over this action for the duration of the Decree. During this time, the EEOC may petition this Court to order Pines to comply with the Decree. Should the Court determine that Pines has not complied, the Court may order appropriate relief including extension of the Decree for the time necessary to remedy non-compliance, award of attorney's fees and costs, and fines for contempt of court.
15. If Pines fails to comply with any provision of this Decree, it shall have ten days to cure its non-compliance. Thereafter, a penalty shall accrue at the amount of \$500 per day, until Pines is in compliance with the Decree again.
16. In the event Pines does not comply with any provision of this Decree, and the Commission must petition the Court to order Pines to comply, the Commission is entitled to an Order requiring the payment of the daily penalty provided for in the above paragraph. In addition, Pines shall pay all attorney's fees and costs incurred by the Commission to enforce the Decree.

MISCELLANEOUS

17. If any provision of this Decree is found to be unenforceable by a Court, only the specific provision in question shall be affected and the other enforceable provisions shall remain in full

force.

18. Any modification to this Decree can only be made by the Court.

19. The terms of this Consent Decree are and shall be binding upon the present and future owners, officers, directors, employees, creditors, agents, trustees, administrators, successors, representatives, and assigns of Pines.

20. Prior to selling all or substantially all of the assets of any Pines facility to another person or entity during the duration of this Decree, Pines shall inform the person or entity of this Decree and provide the person or entity with a copy of the this Decree. In addition, Pines shall provide notice to the EEOC of any transfer of ownership of any Pines facility during the duration of this Decree. Furthermore, this decree will be presented to anyone who acquires an ownership stake in any Pines facility.

21. The Court will retain jurisdiction of this cause for four years for purposes of monitoring compliance with the Decree and entry of such further orders or modifications as may be necessary or appropriate.

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION**

_____/s/ DP_____
DALE PRICE (P55578)
Trial Attorney
DETROIT FIELD OFFICE
Patrick V. McNamara Federal Building
477 Michigan Ave, Room 865
Detroit, Michigan 48226
(313) 226-7808
dale.price@eeoc.gov

THE PINES OF CLARKSTON

_____/s/ (by DP w/ permission)_____
by Robin Geffrey,
President

Dated: August 5, 2015

IT IS SO ORDERED:

s/George Caram Steeh
Hon. George Caram Steeh
United States District Judge

Dated: August 5, 2015

APPENDIX A

EMPLOYEE NOTICE

**Posted Pursuant to a CONSENT DECREE entered in
E.E.O.C. v. The Pines of Clarkston, Inc., Case No. 2:13-cv-14076
with the U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, Detroit Field Office**

NOTICE OF NON-DISCRIMINATION POLICY

Federal law requires that there be no discrimination against any employee or applicant for employment because of the employee's race, color, religion, sex, national origin, age (over 40) or disability.

The federal Americans with Disabilities Act also prohibits employers from discriminating on the basis of disability in aspects of employment, including, but not limited to, hiring, promotion, discharge, pay, job training and fringe benefits. That Act also requires employers to provide a reasonable accommodation to employees with disabilities to enable them to do their jobs.

Pines supports and will comply with such federal law in all respects and will not take any actions against employees because they have exercised their rights, reported an alleged violation under the law or have given testimony, assistance or participation in any investigation, proceeding or hearing conducted by the U.S. Equal Employment Opportunity Commission.

An employee has the right, and is encouraged to exercise that right, to report allegations of employment discrimination in the workplace. An employee may contact the U. S. Equal Employment Opportunity Commission for the purpose of filing a charge of employment discrimination.

Questions concerning this notice may be addressed to:

**Equal Employment Opportunity Commission
477 Michigan Avenue, Room 865
Detroit, Michigan 48226
Telephone: (313) 226-4600
EEOC 800 # 1-800-669-4000
TDD (313) 226-7599**