



1 TERRY GODDARD
2 The Attorney General
3 Firm No. 14000

4 Rose Daly-Rooney, Bar No. 015690
5 Assistant Attorney General
6 Civil Rights Division
7 400 West Congress, Suite S-215
8 Tucson, AZ 85701
9 Telephone: 520.628.6756
10 CivilRights@azag.gov
11 Attorney for Plaintiff

RECEIVED

FEB 06 2008

HON. D. BERNINI
DIV 12

12 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

13 IN AND FOR THE COUNTY OF PIMA

14 THE STATE OF ARIZONA *ex rel.* TERRY
15 GODDARD, the Attorney General; and THE
16 CIVIL RIGHTS DIVISION OF THE ARIZONA
17 DEPARTMENT OF LAW,

18 Plaintiff,

19 vs.

20 TUCSON RESIDENCE FOUNDATION, Inc.,

21 Defendant.

No. C20070612

CONSENT DECREE
(Non-classified Civil)

(Assigned to Hon. Deborah Bernini)

22
23 On February 6, 2007, Plaintiff, the State of Arizona, through Attorney General Terry
24 Goddard and the Civil Rights Division (collectively the "State"), filed the above-captioned
25 Complaint in Pima County Superior Court against Defendant Tucson Residence Foundation,
26 Inc. ("TRF" or "Defendant"), an Arizona corporation, alleging that it discriminated against an
27
28

1 employee, Lisa Parra in violation of A.R.S. §§ A.R.S. § 41-1463(B) & (F)(4) by withdrawing a
2 promotion offer because she is profoundly deaf.

3 Specifically, the State's Complaint alleged that Lisa Parra worked for TRF as an On-Call
4 Mentor for more than a year and then applied for a promotion to a vacant Supervisor position.
5 TRF is a non-profit Arizona corporation providing congregate living homes, individual living
6 arrangements, and in-home supports for people with developmental disabilities. The person
7 hired for the vacant Supervisor position was responsible for supervising two of TRF's
8 residential service settings which served a total of four adults with developmental disabilities.
9 Two of these four clients were persons who are deaf. The Complaint further alleged that TRF
10 Program Director Sarah Elliott hired Ms. Parra for the vacant Supervisor position on or about
11 October 7, 2005 because she was a qualified candidate. However, two guardians of persons
12 living in one of the residential settings objected to Ms. Parra's selection because she is deaf.
13 Subsequently, before Ms. Parra assumed her duties TRF informed her that it had withdrawn the
14 promotion based on the guardians' objections.

15 After the State filed its lawsuit, Lisa Parra retained legal counsel to intervene into the
16 State's lawsuit. However, before the filing of the Motion to Intervene Ms. Parra entered into
17 a separate confidential settlement resolving her claim for monetary damages. The State has
18 reviewed the amount of settlement offered to Ms. Parra to resolve her claim for monetary
19 damages and is satisfied that the settlement agreement between Ms. Parra and Defendant also
20 adequately addresses the State's request for an award of back pay for Ms. Parra as an
21 aggrieved person in its Complaint. The State was not a party to the separate confidential
22 settlement agreement. Therefore, the State seeks to resolve its request for affirmative relief
23 from Defendant.

24 ///

25 ///

26 ///

1 The State and Defendant desire to resolve the remaining issues raised by the Complaint
2 without the time, expense and uncertainty of further contested litigation. Defendant and the
3 State expressly acknowledge that this Decree is the compromise of disputed claims and that
4 there was no adjudication of any claim. By entering into this Consent Decree, Defendant
5 does not admit liability for any claim alleged in this lawsuit and specifically denies such
6 liability. Defendant agrees to be bound by this Decree and not to contest that it was validly
7 entered into in any subsequent proceeding to implement or enforce its terms. The parties,
8 therefore, have consented to the entry of this Decree, waiving trial, findings of fact, and
9 conclusions of law.

10 It appearing to the Court that entry of this Decree will further the objectives of the
11 Arizona Civil Rights Act ("ACRA"), and that the Decree fully protects the parties and the
12 public with respect to the matters within the scope of this Decree, **IT IS HEREBY**
13 **ORDERED, ADJUDGED AND DECREED** as follows:

14 **JURISDICTION**

15 1. This Court has jurisdiction over the subject matter of this action and over the
16 parties and the parties agreed that venue in Pima County was proper. The allegations of the
17 Complaint, if proven, are sufficient to state a claim upon which relief could be granted against
18 Defendant under the ACRA.

19 **RESOLUTION OF THE COMPLAINT**

20 2. This Decree resolves all issues and claims set forth in the State's Complaint.
21 This Decree also resolves all issues relating to acts and practices of discrimination to which
22 this Decree is directed.

23 ///

24 ///

25 ///

26 ///

1 **RELEASE**

2 3. Except for the obligations of Defendant that are expressly set forth in this Decree,
3 Defendant, its agents, employees, successors, assigns and all persons in active concert or
4 participation with Defendant, are released from any and all civil liability to the State for the
5 counts alleged in the Complaint in this matter.

6 **COMPLIANCE WITH ACRA**

7 4. Defendant Tucson Residence Foundation, Inc., its board of directors, officers,
8 employees, agents, and successors are permanently enjoined for the duration of this Consent
9 Decree from:

10 (a) discriminating against any employee based on sex, race, color, national origin,
11 age, religion, or disability,

12 (b) denying employment opportunities to qualified applicants because of
13 discriminatory preferences by guardians or consumers that would be unlawful under ACRA,
14 and

15 (c) retaliating against Lisa Parra or any employee or individual who opposes any
16 practice made unlawful by the Arizona Civil Rights Act ("ACRA"), makes a charge of
17 discrimination, testifies, assists, participates in any manner an investigation, proceeding, or
18 hearing under ACRA and/or Title VII, or makes an internal complaint of discrimination.
19 Defendant agrees that it shall abide by Arizona's civil rights laws.

20 **POLICY CHANGES**

21 5. **Policy for Obtaining Consumer/Legal Representative Input.** Within ninety
22 (90) days of the effective date of this Decree, Defendant will create a written policy for
23 obtaining consumer input regarding applicants and candidates for any position at TRF in which
24 consumer input is considered during the hiring or selection phase. At a minimum, this policy
25 will include: a) a statement that although Defendant considers input from consumers and their
26 legal representatives, it will not deny employment opportunities based on any unlawful
27
28

1 discriminatory consumer preferences, except as to gender preference for employment positions
2 which involve performing or monitoring a client's personal care and hygiene tasks, b) the manner
3 in which input from guardians and consumers may be directed to TRF management responsible
4 for making hiring and selection decisions, and c) the weight accorded to such input by TRF
5 management.

6 6. **Evaluation of Consumer/Legal Representative Input.** Within ninety (90) days
7 of the effective date of this Decree, Defendant will create a written policy or protocol for
8 making an individualized determination about an applicant or candidate's ability to perform a
9 job or job duties because of disability when there is a good faith belief that s/he can not do so
10 because of disability. This written policy or protocol will include a commitment to making an
11 individualized determination for concerns and preferences expressed by consumers or their
12 guardians or legal representative about whether an applicant or candidate is qualified to
13 perform the job of Mentor or Supervisor because of disability and a procedure for undertaking
14 the individualized determination.

15 At minimum, this policy or protocol will include: a) a commitment to undertake
16 individualized assessment of the applicant's ability to perform the essential job functions with
17 or without reasonable accommodation, b) a method for obtaining and considering information
18 to assess the applicant or candidate's individual abilities, including, where appropriate, prior
19 work history with the Defendant, other relevant paid or unpaid work experience, opinions of
20 treating health care practitioners and/or vocational rehabilitation staff, or other appropriate
21 assessments, and c) the positions responsible for undertaking the individualized assessment.

22 7. **Revision of Existing EEO Policy.** Within ninety (90) days of the effective date
23 of this Decree, Defendant will revise its existing Equal Employment Opportunity (EEO) policy
24 statements contained in its employee manual regarding discrimination, harassment, and
25 retaliation and attached as Exhibit A to this Consent Decree.

At minimum, this revised policy will add the following components: a) a statement that harassment and retaliation violate state and federal equal employment laws; b) a description of the process by which persons may internally complain about discrimination, harassment, and retaliation; c) the name(s) or job title(s) of the person(s) responsible for investigating internal complaints of discrimination, harassment, or retaliation; and d) a commitment to make employment decisions without regard to discriminatory customer preferences, if any.

8. **Review of New and Revised Policies.** Within 14 days of the creation of the policies and before disseminating the new or revised policies referred to in paragraphs 5 through 7, Defendant will provide a copy of the policies to the State. Within 14 days of receipt of the new or revised policies, the State will complete its review and provides written comments. In the event the State does not provide any written comments for one or more of the policies, the policy will be deemed to satisfy the relevant requirement in the Consent Decree. The purpose of the State's review and comments will be limited to addressing whether the new or revised policies include the minimum requirements set forth in the Consent Decree.

9. **Dissemination of New and Revised Policies.** Within forty-five (45) days of the creation of the written policy, TRF will distribute the new or revised policies related to employment to all of its employees and it new policy about consumer input for hiring decisions to consumers and legal representatives of consumers in TRF programs. TRF may satisfy this requirement by mailing, emailing and/or hand-delivering copies of the policies or distributing manuals or handbooks which contain these policies to the employees, consumers and consumer legal representatives.

///

///

///

1 **POSTER**

2 10. Defendant shall keep posted at all times in a conspicuous, well-lighted place,
3 at Defendant's main office a poster provided by the State which states that discrimination in
4 employment based on race, color, religion, sex, age, disability, or national origin is
5 prohibited.

6 **TRAINING**

7 11. **Management and Supervisor Training.** Within one hundred eighty (180) days
8 of the effective date of this Decree, Defendant, its managers, supervisors, and others who
9 participate in personnel actions shall receive an interactive training with a qualified trainer.
10 For purposes of this Consent Decree a qualified trainer means either an attorney member of
11 the Arizona Employment Lawyers Association knowledgeable about disability discrimination
12 law or a disability rights or public interest organization specializing in such training.

13 The training may be conducted in one or more training sessions to accommodate the
14 scheduling demands of Defendant's business. Such training will include, at minimum, the
15 following topics: concepts and definitions important to disability discrimination such as the
16 definition of a qualified individual with a disability, reasonable accommodations, and
17 essential functions; disability-related inquiries and medical examination requirements; and
18 non-discrimination in hiring, promotion, transfer, and other personnel actions, and
19 Defendant's new policies for evaluating consumer input and making individualized
20 determinations about ability to perform the essential functions of a job with or without
21 accommodation. The training shall consist of at least three (3) hours of instruction, including
22 a question and answer period.

23 TRF will require new supervisors, managers, and human personnel staff hired or
24 promoted after the date of this training to view a videotape of the training referenced in
25 paragraph 12 and receive any written materials from this training within thirty (30) days of
26 hire.

1 If there are costs associated with the training, the Defendant shall pay for all such
2 costs.

3 12. **Employee Meeting.** Within one hundred eighty (180) days of the effective date of
4 the Consent Decree, TRF agrees to conduct a mandatory meeting for all non-management TRF
5 employees to introduce the revised EEO policies, including the policies for considering non-
6 discriminatory preferences of consumers and legal representatives, and to explain how
7 employees may express interest for other vacant employment opportunities, including
8 promotions within the agency. The requirement to conduct a mandatory employee meeting
9 may be satisfied by scheduling one or more meetings to accommodate the scheduling demands
10 of Defendant's business. TRF agrees to provide a qualified sign language interpreter or other
11 necessary accommodations that will provide effective communication accommodation for any
12 of the meetings conducted under this paragraph which its deaf employees will attend.

13 **REPORTING REQUIREMENTS**

14 13. Defendant agrees to report in writing and in affidavit or declaration form to the
15 Attorney General's Office within six (6) months of the effective date of this Consent Decree
16 and every six months thereafter during the Consent Decree. In the first report, Defendant
17 agrees to report whether and how it has complied with the terms in paragraphs 5-12 and to
18 provide copies of supporting documentation, such as the new or revised policies, receipts of the
19 policy signed by existing and new employees, documentation of participation in training or
20 employee meetings. Subsequent reports shall include the following information:

21 (a) Any changes, modifications, revocations, or revisions to their policies and
22 procedures which concern or affect the subjects of discrimination, harassment, or retaliation;

23 (b) A statement about Defendant's continued efforts to comply with dissemination of
24 the new or revised policies, maintaining the posting of the notice, and additional training
25 undertaken to comply with the Consent Decree; and
26
27
28

1 (c) The names and addresses of any employees or applicants who are deaf who have
2 been denied employment opportunities because of guardian objections during that reporting
3 period.

4 MONITORING FEES FOR THE STATE

5 14. Defendant shall, within ninety (90) days after entry of this Decree, pay to the
6 State the sum of one thousand dollars (\$1000) to monitor compliance with the provisions of this
7 Decree and to enforce civil rights in Arizona. Such payment shall be made in the form of a
8 cashier's check made payable to: "The Arizona Attorney General's Office."

9 CONTINUING JURISDICTION OF THE COURT

10 15. The Court shall retain jurisdiction over both the subject matter of this Consent
11 Decree and the State and Defendant for two (2) years from the date of entry of the Decree to
12 effectuate and enforce this Decree. The State may, for good cause shown, petition this Court
13 for compliance with this Decree at any time during the period that this Court maintains
14 jurisdiction over this action. Should the Court determine that Defendant has not complied with
15 this Decree, appropriate relief, including extension of this Decree for such period as may be
16 necessary to remedy its non-compliance, may be ordered. In the event either the State does not
17 submit any petitions for compliance with the Decree or the Court determines Defendant has
18 complied with the Decree, the Decree shall automatically expire and the Court shall lose
19 jurisdiction over this action on the date two (2) years after entry of the Decree.

20 MISCELLANEOUS PROVISIONS

21 16. This Decree shall be binding on Defendant, its agents, employees, successors,
22 assigns and all persons in active concert or participation with Defendant.

23 ///

24 ///

25 ///

26 ///

17. The State and Defendant represent that they have read this Decree in its entirety and are satisfied that they understand and agree to all its provisions, and represent that they have freely signed this Decree without coercion. The undersigned representative for Defendant also warrants he has express authority to enter into the Consent Decree on behalf of Tucson Residence Foundation, Inc.

18. This Decree shall be governed in all respects by the laws of the State of Arizona.

19. The State and Defendant shall bear their respective attorneys' fees and costs incurred in this action up to the date of entry of this Decree. In any action brought to assess or enforce Defendant's compliance with the terms of this Decree, the Court may in its discretion award reasonable costs and attorneys' fees to the prevailing party.

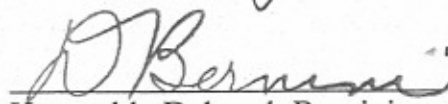
NOTICE

20. When this Decree requires the submission of reports, notices or other materials to the State, they shall be mailed to: Rose Daly-Rooney, Assistant Attorney General, Office of the Attorney General, Civil Rights Division, 400 W. Congress, South Bldg. #S-215, Tucson, AZ, 85701, or her successors.

EFFECTUATING CONSENT DECREE

21. The parties agree to the entry of this Decree upon final approval by the Court. The effective date of this Decree shall be the date that it is entered by this Court.

ENTERED AND ORDERED this 6th day of February 2008.


Honorable Deborah Bernini
Pima County Superior Court

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONSENT TO DECREE

1. On behalf of Tucson Residence Foundation, an Arizona corporation, I acknowledge as President of the Board of Directors that I have read the foregoing Consent Decree, am aware of the corporation's right to a trial in this matter, and have waived that right. I further acknowledge that Defendant Tucson Residence Foundation, Inc. agrees to the jurisdiction of the Court and consents to entry of this Consent Decree.

2. I acknowledge that no promise of any kind or nature whatsoever (other than the terms of this Consent Decree) was made to induce Tucson Residence Foundation, Inc. to enter into this Consent Decree, that it has entered into this Consent Decree voluntarily.

3. I acknowledge that this Consent Decree constitutes the entire agreement between Defendant Tucson Residence Foundation, Inc. and the State.

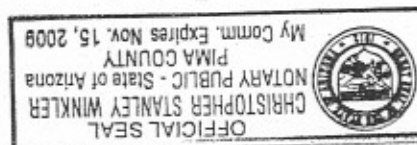
4. As the President of the Board of Directors, I have been authorized to enter into this Consent Decree for and on behalf of Tucson Residence Foundation.

DATED this 22 day of January, 2008.

Tucson Residence Foundation, Inc.

By Edward P. Curley

State of Arizona)
) ss.
County of Pima)



SUBSCRIBED AND SWORN to before me this 22nd day of January, 2007, by Edward Curley.

[Signature]
Notary Public

My Commission Expires: 11-15-09

1 The foregoing Consent Decree have been reviewed and APPROVED AS TO FORM
2 AND SUBSTANCE:

3 TERRY GODDARD
4 The Attorney General

BROENING OBERG WOODS &
WILSON, P.C.

5
6
7 By Rose A. Daly-Rooney
8 Rose A. Daly-Rooney
9 Assistant Attorney General
10 400 West Congress, Suite S-215
Tucson, Arizona 85701

By Terrence P. Woods
for Marilyn D. Cage
1122 East Jefferson Street
Phoenix, Arizona 85034

11 Attorney for Plaintiff State of Arizona

Attorney for Defendant Tucson Residence
Foundation, Inc.

12
13 Date: February 1, 2008

Date: January 24, 2008

EXHIBIT A

Selection of personnel to fill positions will be done by process which involves consideration of a completed application, review of the individual's writing skills, a personal interview, criminal background, and personal reference checks. Misrepresentation, or willful omission; of information by applicants may be grounds for termination of employment.

All personnel assigned to work directly with individuals served must be qualified by experience and training as set within job qualifications along with agency training and certification requirements.

AT-Will Employment:

All employment with Tucson Residence Foundation is on an at-will basis. Although it is hoped that the relationship between the Agency and each employee is long lasting and mutually rewarding, TRF reserves the right to terminate employment with any of its personnel at any time.

Equal Opportunity Employment:

Except for specific bona-fide occupational qualifications, Tucson Residence Foundation does not discriminate in employment opportunities with regard to race, color, religion, sex, sexual orientation, national origin, age, handicap, disability, or status as a Vietnam-era or special disabled veterans.

Harassment:

TRF expressly prohibits any form of unlawful harassment of its personnel, or individuals served. Any individual who believes they have been harassed while in the course of their service or work should report the incident. All allegations must be reported to the Executive Director. Each reported allegation will be investigated, and action taken to stop any harassment. Harassment will be dealt with as a progressive discipline issue and may be considered cause for termination. Allegations of harassment against the Executive Director should be reported to the head of the Personnel Committee of the Board of Directors.

Retaliation Against actions of employment discrimination or unlawful employment practice.

The agency will not take any retaliatory action against any of its employees who has identified, been affected by, or brought action against the agency regarding any type of employment discrimination or unlawful employment practice