

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. PQ271B-02846

ERIC McKINLEY,

Complainant,

v.

eHARMONY.com and
DR. NEIL CLARK WARREN,

Respondents.

ADMINISTRATIVE ACTION

SETTLEMENT AGREEMENT, CONSENT ORDER
AND GENERAL RELEASE

APPEARANCES:

Eric McKinley, Complainant, pro se.

Charles S. Cohen, Deputy Attorney General, for the New Jersey Division on Civil Rights (Anne Milgram, Attorney General of New Jersey, attorney).

Robert E. Freitas, Esq., for the respondents (Orrick, Herrington & Sutcliffe, LLP, attorneys).

WHEREAS, on March 14, 2005, a verified complaint was filed with the State of New Jersey, Division on Civil Rights ("the Division") by Complainant, Eric McKinley, against eHarmony.com ("Company") and Dr. Neil Clark Warren (collectively, "Respondents");

WHEREAS, Respondents denied the allegations of the complaint, and continue to deny that they have violated the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -49 ("Law Against Discrimination"), or have otherwise violated the law, or are liable to Complainant in any respect;

WHEREAS, on July 23, 2007, after conducting an investigation, the Director of the Division ("Director") issued a Finding of Probable Cause as to the allegations of the Complaint;

WHEREAS, on October 1, 2007, the Respondents filed a Motion for Reconsideration of the Finding of Probable Cause, which motion has been held in abeyance pending negotiation of the within settlement;

WHEREAS, the Division has the power and authority to enforce the Law Against Discrimination;

WHEREAS, the Division and the parties desire to amicably settle the matter without the necessity and expense of further litigation and commenced settlement discussions;

NOW, THEREFORE, in consideration of the promises and mutual obligations herein set forth, the Division and the parties agree to settle this matter in accordance with the following terms:

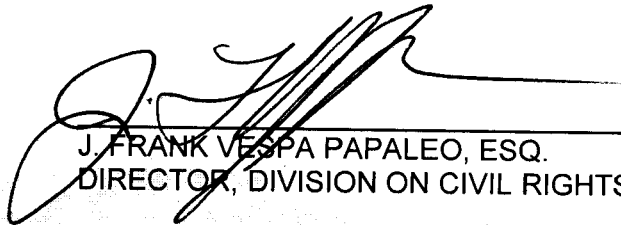
1. The parties hereto stipulate that this Agreement shall fully dispose of all issues in controversy between them with regard to this matter;
2. The Director of the Division on Civil Rights affirms that the Division has not made any findings based upon the merits of this matter, having found probable cause but not having made an adjudication on the merits, and having held in abeyance Respondents' motion for reconsideration pending negotiation of the within settlement;
3. In consideration for the dismissal, with prejudice, of the complaint in this matter, Company agrees to pay the amount of \$50,000 for the Division's administrative expenses, by check made payable to "Treasurer, State of New Jersey," no later than October 31, 2008;
4. In consideration for the dismissal, with prejudice, of the complaint in this matter, and a General Release by Complainant of any and all statutory or other claims, demands, causes of action, damages, or expenses of any kind or nature whatsoever, against Respondents, and their predecessors, successors, affiliates, officers, directors, agents, and employees, that have accrued up to the date this Agreement is signed, and to reimburse him for time spent and expenses incurred in the prosecution of the complaint in this matter, Company agrees to pay the amount of \$5,000 to Complainant Eric McKinley, no later than October 31, 2008;
5. In consideration for the dismissal, with prejudice, of the complaint in this matter, Company agrees to provide same-sex relationship matching services in accordance with the following terms:
 - a. The eHarmony.com website shall provide options for users to identify themselves as a male seeking a male or a female seeking a female, with accessibility, registration procedures and subscription flow substantially similar to that provided to users seeking opposite-sex matches. The same-sex matching services may be provided through a new or differently-named website operated by Company;
 - b. If the above same-sex option links users to a new or differently-named website operated by Company, the homepage of that website shall identify it as an affiliate of or provided by Company;
 - c. Same-sex matching services shall be provided using the same or equivalent technology and service quality, and with the same terms and fees for the consumer, as provided for opposite-sex matching services. Company reserves the right to accompany its offer of same-sex matching services with a statement explaining that Company's Compatibility Matching System™ was developed on the basis of research limited to married heterosexual couples;

- d. Company shall provide a free membership for a term of one year to Complainant, and for a term of six months to the first 10,000 users registering for same-sex matching within one year of the initiation of the same-sex matching service provided by Company;
 - e. Company shall include photos of same-sex couples in the "Diversity" section of the eHarmony-inc.com website as successful same-sex matches are made using the same-sex matching service provided by Company, and Company shall similarly include photos of same-sex couples and individual users of the same-sex matching service in Company's advertising of the same-sex matching service;
 - f. Within thirty (30) days of the initiation of the same-sex matching service provided by Company, the anti-discrimination statements located on Company's websites, handbooks, and publications shall be amended to specifically indicate that Company does not discriminate, among other things, on the basis of "sexual orientation."
 - g. Company shall implement (a) through (d) above by March 31, 2009;
 - h. Company shall initiate the offer of same-sex matching services in good faith, and attempt in good faith to maintain a successful same-sex matching service. In no event shall Company discontinue the offer of same-sex matching services within two years.
 - i. Company shall make a good faith commitment to advertise and/or employ public relations and/or marketing dedicated to its same-sex matching service, and shall enlist the assistance of a media consultant experienced in promoting and ensuring fair, accurate and inclusive representation of gay and lesbian people in the media, to determine the most effective way of reaching the gay and lesbian communities;
6. Upon execution by the Division and the parties, this Settlement Agreement, General Release and Consent Order shall operate as a complete and final disposition and General Release of the charges contained in the verified complaint in this matter;
7. Nothing in this Agreement shall be deemed to be an admission of liability on behalf of Respondents;
8. The Parties will discuss in good faith the timing and content of any announcement by either of them of the execution of this Settlement Agreement, General Release and Consent Order.
9. Upon execution of this Settlement Agreement, General Release and Consent Order by the Parties, this matter shall be dismissed with prejudice subject to the terms listed above.

JOINTLY APPROVED AND SUBMITTED FOR ENTRY:

FOR THE DIVISION:

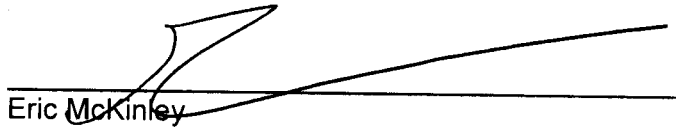
Dated: 11/12/08



J. FRANK VESPA PAPALEO, ESQ.
DIRECTOR, DIVISION ON CIVIL RIGHTS

FOR THE COMPLAINANT:

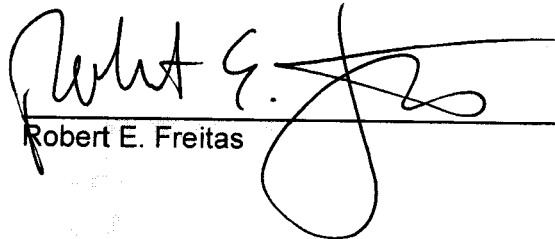
Dated: 111208



Eric McKinley

FOR THE RESPONDENTS:

Dated: November 6, 2008



Robert E. Freitas