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VIA EEOC PORTAL

August 18, 2021

Ms. Mercedes Ricardo, Investigator
U. S. Equal Employment Opportunity Commission
Birmingham District Office
Ridge Park Place
1130 22nd Street South
Birmingham, Alabama 35205

Re: Complainant : Charles Ford
Charge Number : #420-2021-01744
Respondent : Home Depot U.S.A., Inc.

Dear Ms. Ricardo:

Thank you for the additional time to investigate and respond to the above-referenced charge of discrimination. The following position statement is submitted by Home Depot U.S.A, Inc. (“The Home Depot” or “Company”) in response to the above referenced charge filed by current Cashier Charles Ford (“Mr. Ford”). Mr. Ford claims that the Company denied him a promotion to the Head Cashier position based on his age (69). The Home Depot denies Mr. Ford’s allegation and denies discriminating against him in any manner. As set forth in detail below, The Home Depot did not select Mr. Ford for the promotion because he was not the most qualified candidate for the position. The decision was wholly unrelated to Mr. Ford’s age or membership in any other protected category.

The Home Depot is confident that, following the investigation of this charge, the Commission will determine that the allegations of discrimination are unsupported and will dismiss the charge in its entirety.¹

¹ This confidential position statement is submitted to assist the agency in its investigation and is based on Home Depot’s knowledge of the facts at the time it was prepared. The Company expressly reserves the right to submit additional facts or arguments as may be warranted by subsequently discovered information. The Company also submits this information in an attempt to resolve Charging Party’s complaints and, as such, this position statement does not constitute an affidavit, and it is not intended to be used as evidence in any judicial or administrative proceeding.

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OVERVIEW OF THE HOME DEPOT

The Home Depot is a home improvement retailer that stocks products for almost every home improvement project. We strive to take care of our customers and create shareholder value by providing quality products and services at everyday low prices and by employing highly skilled and knowledgeable associates to assist our customers. “Taking care of our people” is one of our core values and a key contributor to our success. We take care of our associates by encouraging them to speak up, by recognizing and rewarding good performance, and by leading and developing our associates. In further support of our commitment of “Taking care of our people,” a Human Resources team is available to partner with store management on human resource matters and to assist our associates with personnel and human resources related matters. In addition, “Respect for all people” is one of The Home Depot’s core values. Associates are expected to treat fellow associates, customers, vendors, and any guests in our facilities with courtesy and respect, and to resolve any differences in a professional, non-abusive, and non-threatening manner.

THE HOME DEPOT’S EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION POLICIES

As an equal opportunity employer, The Home Depot is committed to ensuring that our associates work in an environment of mutual respect, free of discrimination, harassment, and retaliation against applicants, associates, vendors and customers. In support of this commitment, The Home Depot has written policies expressly prohibiting discrimination, harassment and retaliation. Likewise, violations of these policies will result in discipline up to and including termination. The Home Depot’s Harassment and Non-Discrimination Policy expressly prohibits discrimination on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, pregnancy or perceived pregnancy, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, military and veteran status, or any other characteristic protected by applicable law. Moreover, The Home Depot’s Harassment and Non-Discrimination Policy expressly states that the Company does not tolerate harassment based on any characteristic protected by applicable law.

The Home Depot associates are expressly advised that it is their responsibility to notify Company management if they become aware of or even suspect a violation of Company policy or our core values, regardless of whether the conduct involves an associate, manager, customer, or vendor. To that end, the Company provides various avenues to associates to complain of alleged discrimination, harassment, or retaliation. If an associate does not feel comfortable discussing an issue with a particular manager, he or she is instructed to contact the Store Manager, District Human Resources Manager, District Manager, Associate Relations Manager, or the Senior Director of Human Resources for the division or the non-store equivalent. If an associate wants to remain anonymous, he or she can call the Awareline. The Company investigates complaints of

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discrimination, harassment and/or retaliation, and takes appropriate remedial action as warranted by the results of the investigation.

THE HOME DEPOT'S OPEN DOOR PROCESS

The Home Depot is committed to providing an enriching work experience for its associates. One way that we can ensure that we are creating an environment of mutual respect and understanding is to keep the lines of communication open between management and associates. Associates are encouraged to offer suggestions, share ideas, ask questions and engage in open discussion with members of their immediate supervisory and management team. The Open Door Process provides a variety of avenues for associates to bring their concerns to the attention of management (i.e., immediate supervisor, department, facility or location manager, or their Human Resource representative).

One such avenue The Home Depot has implemented is an Associate hotline ("AwareLine"), which is a confidential resource that is available 24 hours a day, seven days a week, for associates to report any concerns that they may have, including concerns about alleged harassment or discrimination. Associates may disclose their identity on the AwareLine or they may remain anonymous. The Home Depot policy specifically prohibits retaliation against any associate who reports harassment or discrimination in good faith.

THE HOME DEPOT'S NO RETALIATION POLICY

The Home Depot expressly advises associates of their rights to (1) file a charge with a government agency or file a lawsuit; (2) testify, assist, or participate in a legal proceeding such as an investigation, hearing, or trial; and (3) report to management known or suspected wrongdoing. The Home Depot does not tolerate any retaliation or threats of retaliation against anyone who exercises his or her legal rights or makes reports of workplace harassment, sexual harassment, or discrimination.

The Home Depot's Equal Employment and Non-Discrimination Policies, No Retaliation Policy, and Open Door Process are addressed with all new associates during the onboarding process and are also disseminated through Company posters, required postings, and ongoing training.

THE HOME DEPOT'S STANDARDS OF PERFORMANCE

The Home Depot has established a set of rules necessary for the orderly and efficient operation of our business, entitled the Standards of Performance. These rules outline the Company's expectations, as well as the consequences that will result if an associate does not meet these expectations. The Standards of Performance also identifies two types of prohibited conduct: Major Violations, which are considered to be so serious in nature that they typically warrant immediate termination upon the first offense; and Minor

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Violations, which are considered to be those behaviors that although not permitted, are generally addressed through the progressive disciplinary process (however, managers maintain the discretion to escalate the discipline progression (or skip steps), depending on the nature and severity of the issue(s)). The Standards of Performance is addressed with all new associates during the onboarding process. Associates may also review the Standards of Performance and other Company policies by accessing the Company's intranet site called "My Apron" at any time during their employment.

BACKGROUND INFORMATION

The Home Depot hired Mr. Ford on January 28, 2019, as a part-time Cashier in store 884 located in Decatur, Alabama ("The Decatur store"). At the time Mr. Ford was hired, he was 67 years of age. Mr. Ford remains currently employed as a part-time Cashier at store 884.

Cashiers play a critical customer service role by providing customers with fast, friendly, accurate and safe service in processing their transactions. With the use of an electronic scanner, Cashiers are involved in processing cash, credit or debit transactions. Associates in this position must be able to multitask by monitoring lines, register equipment as well as entrances and exits. Each associate has the responsibility of providing a safe working and shopping environment by following all safety policies and standards, completing specified safety training, immediately correcting hazards and unsafe conditions or reporting conditions to the Manager on Duty, and working safely as not to endanger themselves, co-workers, vendors, or customers. A copy of the Cashier job description is enclosed as *Exhibit A*.

MR. FORD'S APPLICATION FOR PROMOTION TO HEAD CASHIER

In April 2021, a part-time Head Cashier position became available in the Decatur store. Head Cashiers assist the Front-End Supervisor in overseeing operations on the Front End² of the store, including the cash register area and the lot. More specifically, Head Cashiers are responsible for ensuring that Cashiers and Lot Associates provide customers with fast, friendly, accurate and safe service. Additionally, Head Cashiers are responsible for providing the first level of escalation for customer issues and for ensuring that policies and procedures are followed to minimize shrink.³ A copy of the Head Cashier job description is attached as *Exhibit B*.

² The "Front End" is the area of the store where the checkout registers, Special Services and Returns desks are located.

³ "Shrink" refers to the store's losses resulting from external theft, fraud, or associate dishonesty. In its simplest form, "shrink" occurs when the store's book inventory lists that a certain dollar amount of merchandise is present and available in the store, but the physical count of the store's inventory shows that less than the reported dollar amount is actually on hand.

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Shortly thereafter, three (3) candidates – all of whom were part-time Cashiers at the Decatur store – were interviewed for the position by Front End Supervisor April Wiseman (55) along with Operations Assistant Store Manager Donna Hess (53) or Assistant Store Manager Chris Sullins (49). During the interviews, each candidate was asked the same series of structured questions. They included questions about relevant job experience, customer service standards, dealing with conflict, and supervising others. Each candidate’s answers were scored on a scale of 1 through 5 – with 1 being highly unfavorable and 5 being highly favorable. The scores for each question were then averaged to obtain a final, overall score. Mr. Ford received a score of 3.57 on his interview and candidate Amelia Clarke (22) received a score of 3.14. The highest scoring candidate was Amber Bowers (33) who received a score of 3.71.

In addition to the interview, members of the management team also reviewed and considered the employment history of each candidate. A review of Ms. Bowers’ and Ms. Clarke’s employment history revealed neither had received any verbal or written disciplinary action or performance discussions during their employment. A review of Mr. Ford’s employment history, however, revealed that he had been issued a Coaching dated February 1, 2020, after he inputted “Eat Me” into the associate name section when prompted by the register on two separate occasions. He also had two recent documented Verbal Performance Discussions – one on February 20, 2021 after he inappropriately gave a customer two separate \$150 promotions totaling \$300 when he should only have given one promotion for a total of \$150 off and another on March 27, 2021 when he left his register unattended, despite having been spoken to previously about leaving his register on multiple occasions.

Based on the interview scores and the employment history of each candidate, the decision was made to offer the position to Amber Bowers. Ms. Bowers accepted the position and was promoted to Head Cashier effective May 3, 2021.

MR. FORD’S ALLEGATIONS

Mr. Ford alleges in his charge that after applying for a Head Cashier position in April 2021, he was interviewed and was told by one of his interviewers that he had done very well and “it was the best interview that he had ever seen.” According to Mr. Ford, he met and/or exceeded the qualifications for the position but was later informed he was not selected because the person who was selected for the position interviewed better. Mr. Ford contends that because he was the oldest person who applied for the position and was not selected, he has been discriminated against because of his age (69). This allegation is patently false.

As an initial matter, it should be noted that Mr. Ford did not raise any allegations of discriminatory treatment until after he was not selected for the Head Cashier position and, therefore, such allegations such be viewed with suspicion. Importantly, Mr. Ford was 67 years of age when he was hired approximately two years earlier. At no time during his

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employment did Mr. Ford ever complain that he was being discriminated against based on his age.

Contrary to his allegations, Mr. Ford was not denied a promotion to Head Cashier because of his age. Rather, Mr. Ford was not selected for the Head Cashier position because he was not the most qualified candidate. As discussed above, Mr. Ford's interview score was the not the highest of the three candidates. He received a score of 3.57 out of a possible 5, while the highest scoring candidate, and the successful candidate Amber Bowers, received an interview score of 3.71. Although Mr. Ford claims that Assistant Store Manager Chris Sullins advised him that his interview was "the best he had ever seen," Mr. Sullins denies making this comment and stated he simply advised Mr. Ford that he had done well on his interview, just as he advised Ms. Clarke after she performed well on her interview.

Mr. Ford's contention that he exceeded the qualifications for the Head Cashier position also is not true. A review of his employment history revealed recent performance related issues that diminished his expectations of being selected for a supervisory role. A Head Cashier is a leader in the store who is expected to demonstrate responsible and honest behavior in all Home Depot roles, tasks and responsibilities and is expected to set an example when it comes to following rules and regulations. Given the previous discipline he received for failing to adhere to Company procedures on multiple occasions, Mr. Ford, while minimally qualified, had not exceeded the qualifications for the position and was not the most qualified candidate. Rather, Amber Bowers, the highest-scoring candidate with no performance related documentation, was the most qualified candidate and was selected for the position.

In short, Mr. Ford has provided no evidence whatsoever to prove that he was as qualified, or more qualified, than the candidate selected. Likewise, Mr. Ford has provided no evidence which would support his apparent claim that, but for his age, he would have or should have been selected. Indeed, there is no evidence that Mr. Ford's age was a factor in his not being selected for promotion.

Despite the lack of evidence, Mr. Ford assumes that the only possible reason he was not selected is because of his age. In truth, and as detailed above, the only reason Mr. Ford was not selected for the Head Cashier position was that a more qualified candidate was in contention for the same job.

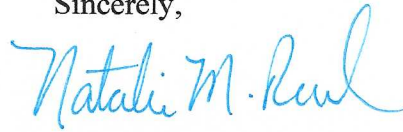
CONCLUSION

The Home Depot did not discriminate against Mr. Ford because of his age, or for any other reason. The Home Depot is an equal opportunity employer and is proud of its record of treating *all* associates fairly and equally.

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Based on this information, The Home Depot respectfully requests that the Commission issue a *no cause* determination and dismiss this Charge of Discrimination. If you have any questions, please call me at (404) 368-6691.

Sincerely,



Natalie M. Reed
EEO Compliance Manager