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United States of America v. City of New York and New York City Department of Transportation

Judge William H. Pauley III

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United States of America v. City of New York and New York City Department of Transportation

Keywords

United States of America, City of New York, New York City Department of Transportation, 07 Civ. 2083 (WHP)(HP), Consent Decree, Disparate Treatment, Hiring, Sex, Female, Transportation, Employment Law, Title VII

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

- v -

CITY OF NEW YORK and NEW YORK CITY
DEPARTMENT OF TRANSPORTATION,

Defendants.

:
: 07 Civ. 2083 (WHP)(HP)
:
: ECF Case
:
:
: STIPULATION AND ORDER OF
: SETTLEMENT WITH RESPECT
: TO VICTIM-SPECIFIC RELIEF
:
: X

WHEREAS, on March 12, 2007, plaintiff the United States of America filed a complaint in this action (the "Complaint"), alleging that the New York City Department of Transportation (the "Department of Transportation" or "DOT") and the City of New York (the "City") (collectively, the "Defendants") engaged in a pattern or practice of employment discrimination by refusing to hire qualified female applicants for the position of Bridge Painter on the basis of their sex, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e ("Title VII"); and

WHEREAS, the Complaint seeks (i) injunctive relief with respect to the Department of Transportation's hiring policies, procedures and practices with respect to the Bridge Painter position, and (ii) equitable relief for female applicants for the position of Bridge Painter who were victims of employment discrimination by Defendants;

WHEREAS, on June 27, 2007, the Court approved the request of four female applicants for the Bridge Painter position – Joann Rush, Helen Jackson, Efrosini Katanakis, and Luzia Oliskovicz (collectively, the "Claimants") – and

Local Union No. 806 (collectively with the Claimants, the “Intervenors”) to intervene in this action; and

WHEREAS, on July 2, 2009, the Court granted Defendants’ motion for summary judgment insofar as it pertained to the claims of the Intervenors and dismissed such claims; and

WHEREAS, a bench trial was held on the United States’ claims from October 13 to October 19, 2009 before the Court; and

WHEREAS, on May 13, 2010, the Court issued an Opinion and Order (the “Decision” or “Trial Op.”) [Dkt. No. 73], holding that “the United States established its pattern-or-practice disparate treatment claim,” *see* Trial Op. at 39, but “reserve[d] final judgment with respect to [the United States’ requests] for individual hiring and compensatory relief pending further briefing from the parties,” *see* Trial Op. at 42; and

WHEREAS, on May 28, 2010, the Court entered partial judgment pursuant to Federal Rule of Civil Procedure 54(b) (the “Partial Judgment”) and issued a Compliance Injunction (the “Injunction”) [Dkt. Nos. 76 and 75], setting forth requirements regarding the Department of Transportation’s policies, procedures, and practices for hiring for the Bridge Painter position; and

WHEREAS, on June 25, 2010, Defendants filed a Notice of Appeal from the Partial Judgment, which appeal is currently pending before the United States Court of Appeal for the Second Circuit (the “Appeal”); and

WHEREAS, the United States and Defendants have submitted supplemental briefing with regard to the appropriate equitable relief; and

WHEREAS, on or about August 6, 2010, the Department of Transportation offered Ms. Katanakis a provisional appointment to the position of Bridge Painter; and

WHEREAS, Ms. Katanakis commenced employment with DOT as a provisional Bridge Painter on September 7, 2010; and

WHEREAS, the United States and Defendants wish to consensually resolve the claims in this action for victim-specific relief, so as to avoid further protracted litigation regarding the victim-specific relief and to preserve judicial resources;

NOW, THEREFORE, IT IS STIPULATED, AGREED AND ORDERED that:

1. In full and complete satisfaction of the claims of the United States in this action for victim specific relief on behalf of the Claimants, the Defendants shall offer the following backpay relief:

a. A monetary award of two hundred fifty thousand dollars (\$250,000), subject to the applicable deductions for federal, state and local withholding taxes on the monetary award as required by law, to Helen Jackson;

b. A monetary award of two hundred fifty thousand dollars (\$250,000), subject to the applicable deductions for federal, state and local withholding taxes on the monetary award as required by law, to Joann Rush;

c. A monetary award of two hundred and fifty thousand dollars (\$250,000), subject to the applicable deductions for federal, state and

local withholding taxes on the monetary award as required by law, to Luzia M. Oliskovicz; and

d. A monetary award of two hundred and fifty thousand dollars (\$250,000), subject to the applicable deductions for federal, state and local withholding taxes on the monetary award as required by law, to Efrosini Katanakis.

2. Within ten (10) days after the date of entry of this Stipulation and Order, the Defendants shall notify the Claimants of its terms by mailing to each, in care of their counsel, via certified mail, a notification letter in the form set forth in Appendix A (the "Appendix A letters"). Enclosed with the Appendix A letters shall be (1) the form attached as Appendix B, (the "Release of Claims Form"); (2) forms W-4 and IT 2104, attached as Appendix C; (3) an Affidavit Concerning Liens, in the form attached as Appendix D; and (4) a copy of this Stipulation and Order.

3. Only those Claimants who sign, notarize, and return the Release of Claims Form and the Affidavit Concerning Liens, as well as return completed and executed Forms W-4 and IT 2104 to the Defendants shall be eligible for the individual relief described in paragraph 1 of this Stipulation and Order. Any Claimant who does not return the aforementioned documents to the Defendants within sixty days of the date of mailing, absent a showing of good cause, shall be deemed to have waived her entitlement to relief under this Stipulation and Order. The determination that a Claimant has shown good cause shall be within the sole discretion of the Court.

4. The Defendants shall provide the United States with a copy of each of the executed Release of Claims Form, the Forms W-4 and IT 2104 and the Affidavit Concerning Liens within ten (10) days of their receipt thereof.

5. Within a reasonable period of time from the date of their receipt of the Release of Claims Form, the Forms W-4 and IT 2104 and the Affidavit Concerning Liens from a Claimant, the Defendants shall mail to that Claimant a check made payable to her in the amount set forth in paragraph 1 of this Stipulation and Order. The Defendants will issue the appropriate tax documents to each Claimant within the time required by law. The Claimants will be responsible for paying any income taxes due on the payments that they receive from the Defendants. Nothing in this paragraph shall be construed as a waiver by the Defendants of any right that they may have to challenge, in an appropriate forum, the necessity of withholding employer taxes or employer contributions for the backpay awards.

6. At the time of a payment to a Claimant pursuant to this Stipulation and Order, the Defendants shall provide the United States with notice of the payment having been made to that Claimant.

7. Within three (3) days after the entry of this Stipulation and Order, Defendants and the United States shall submit a joint stipulation to the United States Court of Appeal for the Second Circuit, stipulating to the withdrawal of the Appeal, in the form attached as Appendix E.

8. Nothing contained herein shall limit, affect or modify the Compliance Injunction or the Defendants' obligation to comply in all respects with the Compliance Injunction.

9. Defendants agree to forever forfeit and waive their right to challenge, in any manner, in any respect and at any time, the liability determination set forth in the Court's Decision.

10. Nothing in this Stipulation and Order shall bar the Defendants from applying to the district court for a modification of the terms of the Compliance Injunction; provided however, that as set forth in paragraph 9, the Defendants have waived any challenge to the liability determination set forth in the Court's Decision and provided further, however, that unless the Defendants obtain the consent of the United States to such a modification, any such application for modification of the terms of the Compliance Injunction shall be made in writing, shall be served upon the United States at least 30 days in advance of any hearing scheduled with respect to the application, and shall provide the United States with at least 14 days to file its response to the application for a modification.

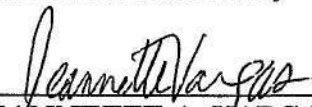
11. The United States and the Defendants shall bear their own costs and fees in this action, except that the parties shall retain the right to seek costs and fees for any matter which, in the future, may arise from this Agreement or from the Compliance Injunction and require resolution by the Court.

12. Nothing contained in this Stipulation and Order shall be deemed to constitute a policy or practice of the New York City Department of Transportation, the City of New York, or any of its constituent agencies.

13. The United States and Defendants understand and agree that this Stipulation and Order contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect.

Dated: New York, New York
September 22, 2010

PREET BHARARA
United States Attorney


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Dated: New York, New York
September __, 2010

MICHAEL A. CARDOZO
Corporation Counsel of the City
of New York

By: _____
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Assistant Corporation Counsel
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Counsel for Defendants

SO ORDERED:

 9/30/10
HONORABLE WILLIAM H. PAULEY, III
UNITED STATES DISTRICT JUDGE

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the _____ day of September, two thousand and ten,

UNITED STATES OF AMERICA,
Plaintiff,

- v -

CITY OF NEW YORK and NEW
YORK CITY DEPARTMENT OF 

STIPULATION

Docket Number: 10-2627

The undersigned counsel for the parties stipulate that the above-captioned case is withdrawn without costs and without attorneys' fees pursuant to FRAP 42(b).

Date:

Attorney for Appellant

MICHAEL A. CARDOZO, Corporation Counsel
Print Name and Firm

Date:

Attorney for Appellee

PREET BHARARA, United States Attorney
Print Name and Firm