

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

**EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,**

**Plaintiff,**

**v.**

**GAMMANS ARCHITECTURAL  
d/b/a Skylights International, Inc.,  
and GAMMANS  
ARCHITECTURAL PRODUCTS,  
INC.,**

**Defendants.**

**CIVIL ACTION FILE**

**NO. 3:05-CV-097-JTC**

**ORDER FOR SERVICE OF FINAL  
REPORT AND RECOMMENDATION**

Attached is the report and recommendation of the United States Magistrate Judge made in this action in accordance with 28 U.S.C. § 636(b)(1) and this Court's Local Rules LR 73 and LCrR 58.1. Let the same be filed and a copy, together with a copy of this Order, be served upon counsel for the parties.

Pursuant to 28 U.S.C. § 636(b)(1), each party may file written objections, if any, to the report and recommendation within ten (10) days of the receipt of this Order. Should objections be filed, they shall specify with particularity the alleged error or

errors made (including reference by page number to the transcript if applicable) and shall be served upon the opposing party. The party filing objections will be responsible for obtaining and filing the transcript of any evidentiary hearing for review by the district court. If no objections are filed, the report and recommendation may be adopted as the opinion and order of the district court and any appellate review of the factual findings will be limited to a plain error review. United States v. Slay, 714 F.2d 1093 (11th Cir. 1983), cert. denied, 464 U.S. 1050, 104 S. Ct. 729, 79 L. Ed. 2d 189 (1984).

The clerk is directed to submit the report and recommendation with objections, if any, to the district court after expiration of the above time period.

**SO ORDERED**, this 20<sup>th</sup> day of July, 2006.

  
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JANET F. KING  
UNITED STATES MAGISTRATE JUDGE

**IN THE UNITED STATES DISTRICT COURT  
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**EQUAL EMPLOYMENT  
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**Plaintiff,**

**v.**

**GAMMANS ARCHITECTURAL  
d/b/a Skylights International, Inc.,  
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ARCHITECTURAL PRODUCTS,  
INC.,**

**Defendants.**

**CIVIL ACTION FILE NO.**

**3:05-CV-097-CC**

**FINAL REPORT AND RECOMMENDATION**

Plaintiff Equal Employment Opportunity Commission (“EEOC”) brought the above-styled action [Doc. 1] on September 30, 2005, against Defendants Gammans Architectural, d/b/a Skylights International, Inc., and Gammans Architectural Products, Inc. Plaintiff EEOC alleged that Defendants terminated the employment of James Hall and Gary Richardson on the basis of race, in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended, 42 U.S.C. § 2000e, et seq.

On April 28, 2006, District Judge Clarence Cooper issued an order [Doc. 12] granting Plaintiff’s motion [Doc. 8] for default judgment and referring the case back to

the undersigned. Pursuant to Judge Cooper's order, the undersigned held an evidentiary hearing<sup>1</sup> on June 26, 2006, in order to address the issues of damages and whether Defendants' unlawful employment practices were intentional and carried out with malice and/or reckless indifference to the federally protected rights of Mr. Hall and Mr. Richardson.

## **I. Facts**

The evidence presented at the evidentiary hearing established the following facts. Defendants Gammans Architectural, d/b/a Skylights International, Inc., and Gammans Architectural Products, Inc. ("Defendants" or "Gammans") operate a business facility in Newnan, Georgia. [Tr. at 4-5]. The Newnan facility consists of an office area and a shop area. [Tr. at 5]. Within the shop area, there are three (3) departments: shipping, fabrication/assembly, and welding. [Tr. at 6, 32, 35]. During the relevant period of time, Gary Richardson and James Hall, both of whom are black, worked for Gammans in the fabrication department within the shop area. [Tr. at 3, 6, 32,35]. Mr. Hall worked as a large saw operator, and Mr. Richardson worked as a saw helper. [Tr. at 6, 31]. Mr. Richardson began working for Gammans in 1999, while Mr. Hall worked

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<sup>1</sup>Citations to the transcript of the evidentiary hearing are: [Tr. at ].

for the company from approximately 1985 to 1988 and then returned in 1992. [Tr. at 5, 29-30].

On July 29, 2003, Gammans laid off Mr. Richardson and Mr. Hall. [Tr. at 7-8, 33]. Decision-makers at Gammans stated that the employees were terminated because of a lack of work. [Tr. at 9, 16-17, 39; Plaintiff's Exhibit ("Pla. Ex.") 1, 3]. At the time that they were laid off, Mr. Richardson and Mr. Hall were the most tenured and experienced employees in their respective positions. [Tr. at 21-22, 32-34]. Mr. Richardson earned \$9.00 per hour, and Mr. Hall earned \$12.00 per hour. [Tr. at 5, 39-40; Pla. Ex. 4]. All of the less experienced and less tenured employees retained or hired by Gammans to perform the work that had been performed by Mr. Richardson and Mr. Hall were white. [Tr. at 21-22, 41-42].

Mr. Richardson received unemployment compensation for twenty-two (22) weeks after his termination. [Tr. at 9]. He applied for positions with many different employers in the Newnan area, including restaurants, automobile dealerships, and construction companies. [Tr. at 9-16]. Mr. Richardson testified that he was able to obtain a little work with a former employer who ran a construction company, but for the most part, he has not been able to find any employment. Eventually, Mr. Richardson began performing odd jobs for neighbors, such as cutting grass, cleaning

gutters, spraying houses for insects, and doing general work as a handy man. [Tr. at 13-15]. He earned approximately \$500 per month from the beginning of 2004 until the present. [Tr. at 14].

At the time he was laid off, Mr. Richardson's two (2) children were five (5) years old and four (4) months old. [Tr. at 22]. He and his wife were forced to rely solely on her income to support their family; they began arguing about money; and their family was not able to do many of the things that they had enjoyed before his layoff. [Tr. at 22-24]. Mr. Richardson testified that the loss of his job from Gammans caused him to experience severe anxiety, stress, depression, and humiliation. He did not seek any psychological counseling, however, because he could not afford it. [Tr. at 22-24].

Mr. Hall received unemployment compensation for twenty-two (22) weeks after his termination. [Tr. at 36]. He applied for positions with many different employers in the Newnan area, including numerous construction companies and stores. [Tr. at 37-39]. Eventually in 2004, he obtained a position at Photo Circuit through a temporary agency. Mr. Hall worked at Photo Circuit for nine (9) months making \$7.50 per hour. [Tr. at 38]. His employment ended when the company went out of business. [Tr. at 38-39]. Mr. Hall then found employment with Beck Building Cleaning as a floor technician. [Tr. at 39]. He worked at Beck for eleven (11) months, making \$8.50 per

hour for the first three (3) months on the job and \$9.50 per hour during his last eight (8) months. [Tr. at 39]. Mr. Hall is currently looking for work again. [Tr. at 39].

Mr. Hall testified that after he was laid off, he had to sell his car in order to continue making payments on his apartment. [Tr. at 42]. He was eventually unable to pay his rent and was evicted. [Tr. at 42]. He then moved in with his sister. Due to difficulty paying his bills and his credit card debt, Mr. Hall's credit rating dropped significantly. [Tr. at 42]. He testified that the loss of his job from Gammans caused him to experience severe anxiety, stress, depression, and humiliation. [Tr. at 34-38, 41-43]. In addition, Mr. Hall was unable to afford his medication. [Tr. at 38].

## **II. Discussion**

A Title VII claimant is presumptively entitled to back pay, including benefits, but he has a duty to mitigate damages. See Albemarle Paper Co. v. Moody, 422 U.S. 405, 417-23, 95 S. Ct. 2362, 2371-74, 45 L. Ed. 2d 280 (1975). Title VII provides that “[i]nterim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.” 42 U.S.C. § 2000e-5(g)(1). “This is appropriate because the purpose of Title VII is to ‘make whole’ a victim of discrimination, not to provide a windfall.” Sowers v. Kemira, Inc., 701 F. Supp. 809, 826 (S.D. Ga. 1988). The Supreme Court

has stated that a Title VII claimant must “use reasonable diligence in finding other suitable employment. Although the unemployed or underemployed claimant need not go into another line of work, accept a demotion, or take a demeaning position, he forfeits his right to back pay if he refuses a job substantially equivalent to the one he was denied.” Ford Motor Co. v. EEOC, 458 U.S. 219, 231-32, 102 S. Ct. 3057, 3065-66, 73 L. Ed. 2d 721 (1982). Similarly, when a discharged Title VII claimant finds “suitable employment” but then quits without a justifiable reason, “the amount he would have earned had he not quit” should be excluded from back pay. NLRB v. Miami Coca-Cola Bottling Co., 360 F.2d 569, 575 (5<sup>th</sup> Cir. 1966);<sup>2</sup> Reiner v. Family Ford, Inc., 146 F. Supp. 2d 1279, 1286 (M.D. Fla. 2001).

In the present case, the court finds that both Mr. Richardson and Mr. Hall used more than reasonable diligence in trying to obtain suitable employment. They both applied for positions with many different employers, and they took diligent steps to earn at least some income. As noted *supra*, a claimant “forfeits his right to back pay if he refuses a job substantially equivalent to the one he was denied.” Ford Motor Co.,

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<sup>2</sup>Although this case involved the National Labor Relations Act and not Title VII, the Supreme Court has stated that Title VII’s “back pay provision was expressly modeled on the back pay provision of the National Labor Relations Act.” Moody, 422 U.S. at 419, 95 S. Ct. at 2372.

458 U.S. at 232, 102 S. Ct. at 3066. In the present case, there is no evidence that either Mr. Richardson or Mr. Hall ever refused any job, much less a substantially equivalent job. They are both entitled to back pay, which is “the difference between the actual wages earned and the wages the individual would have earned in the position that, but for the discrimination, the individual would have attained.” Akouri v. State of Florida Dep’t of Trans., 408 F.3d 1338, 1343 (11<sup>th</sup> Cir. 2005) (quoting Gunby v. Pennsylvania Electric Co., 840 F.2d 1108, 1119-20 (3<sup>rd</sup> Cir. 1988)). Plaintiff EEOC has correctly noted that the Eleventh Circuit does not take into consideration unemployment compensation when calculating back pay. Brown v. A.J. Gerrard Mfg. Co., 695 F.2d 1290, 1292-93 (11<sup>th</sup> Cir. 1983).

Rosalynn Williams, a senior investigator with the EEOC, testified at the evidentiary hearing on the issue of the calculation of back pay for both Mr. Richardson and Mr. Hall. [Tr. at 46-58]. Ms. Williams testified that the EEOC uses a software program called PayCalc, which is verified for its accuracy, to determine the amount of back pay, including interest, that should be awarded to complainants. [Tr. at 49-50]. Ms. Williams also stated that she has used PayCalc to calculate back pay on more than eighty (80) occasions in her position as a senior investigator. [Tr. at 49]. Ms. Williams created two (2) PayCalc spreadsheets which detail the amount of back pay owed to

Mr. Richardson and Mr. Hall. [Tr. at 50-59, 65; Pla. Exs. 7, 8]. Mr. Richardson's total back pay is \$42,484.18, and Mr. Hall's total back pay is \$50,124.15. [Tr. at 50-59, 65; Pla. Exs. 7, 8]. These spreadsheets have been submitted to the court, and the undersigned finds that they accurately reflect the difference between the complaints' actual income earned and the income they would have earned if they had remained in their positions at Gammans, plus interest.

The court also considered the issue of reinstatement as directed by the district court. Testimony from Mr. Richardson and Mr. Hall at the evidentiary hearing indicated that neither was seeking reinstatement. Plaintiff EEOC did not request reinstatement at Gammans as an element of relief. [Tr. at 62-63]. Accordingly, the court does not recommend that reinstatement be included in the recovery awarded in this case.

Forty-two U.S.C. § 1981a provides that "the complaining party may recover compensatory and punitive damages" in Title VII cases. "Compensatory damages" as used in § 1981a does not include back pay or interest on back pay. 42 U.S.C. § 1981a(b)(2). The statute sets a limit on the amount of compensatory and punitive damages that a complainant may recover. The portion of the statute relevant to the present case reads as follows:

The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party– (A) in the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$50,000. . . .

42 U.S.C. § 1981a(b)(3).

Plaintiff EEOC seeks nonpecuniary, compensatory damages in an amount of \$35,000 for Mr. Hall and \$35,000 for Mr. Richardson. Claimants who have received substantial awards for emotional distress and other intangible injuries usually “were either the victims of invidious discrimination, suffered serious–often permanent–physical injuries, or *were discharged and had difficulty finding alternative employment.*” Hetzel v. County of Prince William, 89 F.3d 169, 172 (4<sup>th</sup> Cir. 1996) (emphasis added). In the present case, both Mr. Richardson and Mr. Hall have established that they have experienced significant difficulty in finding alternative employment after their employment with Gammans was terminated. Their testimony also shows that they have suffered from “emotional pain, suffering, inconvenience, mental anguish, [and] loss of enjoyment of life.” 42 U.S.C. § 1981a(b)(3).

Mr. Richardson testified that he and his wife were forced to rely solely on her income to support themselves and their two (2) young children and that they began arguing about money after the termination. In addition, their family was not able to do many of the things that they had enjoyed before his layoff. [Tr. at 22-24]. He testified that the loss of his job from Gammans caused him to experience severe anxiety, stress, depression, and humiliation, and Defendants have offered no evidence to the contrary. [Tr. at 22-24].

Mr. Hall testified that after he was laid off, he had to sell his car in order to continue making payments on his apartment. [Tr. at 42]. He was eventually unable to pay his rent and was evicted, and he was forced to move in with his sister. Because of his difficulty paying his bills, Mr. Hall's credit rating dropped significantly. [Tr. at 42]. In addition, Mr. Hall was unable to afford his medication. [Tr. at 38]. He testified that the loss of his job from Gammans caused him to experience severe anxiety, stress, depression, and humiliation, and Defendants have offered no evidence to the contrary. [Tr. at 34-38, 41-43].

As Plaintiff EEOC has noted, numerous courts in similar cases have upheld awards for compensatory damages that are far greater than the amounts sought here. See Smith v. Norwest Financial Acceptance, Inc., 129 F.3d 1408, 1416-17 (10<sup>th</sup> Cir.

1997) (upholding \$200,000 award based, in part, on evidence that plaintiff suffered from symptoms such as humiliation, degradation, loss of self-respect, sleeplessness, and stress in family relationships); Hogan v. Bangor and Aroostook Railroad Co., 61 F.3d 1034, 1037-38 (1<sup>st</sup> Cir. 1995) (upholding \$200,000 award based on evidence that plaintiff's family was under financial distress, and plaintiff "became depressed, withdrawn, and gave up his usual activities"); Rau v. Apple-Rio Management Co., Inc., 85 F. Supp. 2d 1344, 1348-49 (N.D. Ga. 1999) (not reducing jury award of \$92,000 for "injuries such as emotional pain and suffering, inconvenience, mental anguish, and other nonpecuniary losses"). "A district court has 'broad, equitable discretion to grant any equitable relief it deems appropriate to make persons whole for injuries suffered on account of unlawful discrimination.'" Hicks v. Dothan City Board of Education, 814 F. Supp. 1044 (M.D. Ala. 1993). In light of the facts of this case, the court finds that the amounts requested by Plaintiff EEOC to compensate Mr. Richardson and Mr. Hall for their nonpecuniary losses are appropriate.

Forty two U.S.C. § 1981(a)(1) provides that a "complaining party may recover punitive damages . . . if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual." At

the evidentiary hearing, Plaintiff EEOC did not introduce evidence that Defendants acted with malice or with reckless indifference to the rights of Mr. Richardson or Mr. Hall. Plaintiff also gave no indication that it was seeking any award of punitive damages in this case. [Tr. at 62-63]. Given these facts, the undersigned concludes that punitive damages are not warranted.

### **III. Conclusion**

For all the foregoing reasons and cited authority, the undersigned **RECOMMENDS** that Mr. Richardson recover from Defendants the sum of \$77,484.18, which represents back pay in the amount of \$42,484.18 and compensatory damages in the amount of \$35,000. The undersigned further **RECOMMENDS** that Mr. Hall recover from Defendants the sum of \$85,124.15, which represents back pay in the amount of \$50,124.15 and compensatory damages in the amount of \$35,000.

The Clerk is **DIRECTED** to terminate this reference.

**SO RECOMMENDED**, this 20<sup>th</sup> day of July, 2006.

  
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JANET F. KING  
UNITED STATES MAGISTRATE JUDGE