

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
Case No. 02-60652-Civ-GRAHAM/GARBER

ELGIN O. JONES,

Plaintiff,

V.

CITY OF FORT LAUDERDALE, FLORIDA,

Defendant.

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF FORT LAUDERDALE, FLORIDA,

Defendant.

SETTLEMENT AGREEMENT

This action, originally filed as Case No. 02-61262 and later consolidated with Case No. 02-60652, was brought by the United States of America ("United States") against the City of Fort Lauderdale, Florida ("the Defendant") to enforce the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., as amended ("Title VII"), following receipt by the Department of Justice from the Equal Employment Opportunity Commission ("EEOC") of a timely charge of discrimination filed by Elgin O. Jones (Charge No. 15A-98-0317). Title VII applies to the Defendant because it is a person within the meaning of 42 U.S.C. § 2000e(a), and an employer within the meaning of 42 U.S.C. § 2000e(b). This Court has jurisdiction over this action under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. §§ 1331, 1345.

In its complaint, the United States alleges that the Defendant has discriminated against Mr. Jones in violation of Sections 703(a) and 704(a) of Title VII, 42 U.S.C. §§ 2000e-2(a), 2000e-3(a) by, inter alia:

- a. failing or refusing to promote Mr. Jones to the position of Engineering Inspector I in February 1998 because of his race;
- b. subjecting Mr. Jones to harassment that adversely affected the terms, conditions, and privileges of his employment because he opposed employment practices by the Defendant that he reasonably believed to be unlawful practices on the basis of race, filed an internal complaint of discrimination with the Defendant, and filed a charge of discrimination with

the EEOC, Charge No. 15A-98-0317; and

c. failing or refusing to take appropriate action to remedy fully the effects of the discrimination against Mr. Jones.

Mr. Jones eventually was promoted to the position of Engineering Inspector I in September 1998, but did not receive back pay or other relief.

The Defendant denies the United States' allegations and further denies that it engages in or has engaged in any unlawful employment discrimination, harassment, or retaliation in violation of Title VII. The Defendant asserts that it is committed to a policy of equal employment opportunity and voluntarily enters into this settlement agreement. The Defendant's signature on this agreement should in no way be viewed as an admission of liability under Title VII.

Desiring that this action be settled by an appropriate settlement agreement and without the burden of protracted litigation, the parties agree to this Court's jurisdiction over them and the subject matter of this action. Subject to the approval of this settlement by the Court, the parties waive, for the purposes of this settlement agreement, hearings and findings of fact and conclusions of law. This settlement agreement is a full, final, and complete resolution of all claims alleged in the United States' complaint, and the United States agrees not to further pursue those claims. Each party shall bear its own attorney's fees and costs. The parties accept this settlement agreement as final and binding between themselves as to the issues resolved herein.

It is therefore agreed as follows:

GENERAL CONDITIONS

1. The Defendant agrees not to engage in any act that unlawfully discriminates against any employee or potential employee because of that individual's race.
2. The Defendant agrees that it will not retaliate against any person in a manner prohibited by § 704(a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-3(a), because that person:
 - a. made an internal complaint of discrimination;
 - b. filed a charge of discrimination with the EEOC, the Florida Commission on Human Relations, or the Broward County Human Rights Division;
 - c. participated in or cooperated with the initiation, investigation, litigation or administration of this settlement agreement; or
 - d. provided information to the Department of Justice.
3. Within thirty (30) days after the effective date of this settlement agreement, the Defendant will post notices in the form attached hereto as Appendix A. Such notices will be posted in a prominent and conspicuous location or locations used for posting notices in City Hall and in the Department of Public Services. Such notices will remain posted for a period of ninety (90) days after the date of execution of this settlement agreement.
4. Within thirty (30) days after the effective date of this settlement agreement, the Defendant will revise the City of Fort Lauderdale's Policy and Standards Manual, Chapter 14, Section 1, entitled "Prohibition of Unlawful Discrimination and Harassment in the Workplace," as set forth in Appendix B, hereto, and will provide to the United States documentation that these revisions have been made. The

Defendant's anti-discrimination policies will make clear that the Defendant will take into account compliance with these policies, including City of Fort Lauderdale Policy and Standards Manual, Chapter 14, Section 1, entitled "Prohibition of Unlawful Discrimination and Harassment in the Workplace," in conducting performance evaluations for all City employees and when deciding whether an employee should receive a promotion, award, or other performance-related benefit.

5. If the Defendant finds that any of its employees has engaged in discrimination or retaliation in violation of Title VII, or if a court of competent jurisdiction determines that a City employee has engaged in actions made unlawful by Title VII, the City shall, at a minimum, place a letter in the employee's personnel file documenting the employee's failure to comply with the Defendant's anti-discrimination policy and/or federal law.

6. The City will post anti-discrimination and anti-harassment policies in a prominent and conspicuous location or locations used for posting notices in City Hall and in the Department of Public Services.

ANTI-DISCRIMINATION TRAINING

7. The Defendant will arrange for a mandatory live training for all employees, including supervisors, in the Distribution and Collection Division of the City of Fort Lauderdale's Department of Public Services regarding Title VII's prohibitions against racial discrimination, retaliation, and harassment because an employee has engaged in activity protected by Title VII. This training will be completed by December 31, 2003, in a manner that accommodates the Defendant's operational needs. The Defendant also will arrange for a mandatory live training regarding Title VII's prohibitions for the Executive Management Team (*i.e.*, employees fulfilling the duties currently performed by the Internal Auditor, Director of Administrative Services, City Manager, Assistant City Managers, Finance Director, Director of Parks and Recreation, Director of Communications, Public Services Director, City Clerk, Police Chief, and Fire Chief); employees working in the Office of Professional Standards (which is responsible for reviewing or investigating discrimination complaints); and other employees with managerial responsibility for personnel and human resources matters (*i.e.*, employees fulfilling the duties currently performed by the Employee Relations Director, Assistant Employee Relations Director, Employment Manager, Personnel Director, Classifications and Compensation Manager, and Director of Organizational Training and Development). All persons required to attend this live training will sign an attendance verification sheet. The Defendant will maintain a copy of the attendance verification sheet in each attendee's personnel file as long as this settlement agreement remains in effect. The United States and the Defendant will confer and agree on who will administer this training, and the Defendant will bear the costs of such training.

a. None of the employees, managers, or supervisors specified herein will be exempted from this mandatory live training except for an approved absence. Notwithstanding an approved absence, the Defendant will require any employee or supervisor who is unable to attend the live training to watch a video replay, administered by the Defendant, within two weeks thereafter or as soon as practicable. All employees attending the video replay session will sign a training attendance verification sheet. The Defendant will maintain a copy of this training attendance verification sheet in the employee's personnel file as long as this agreement remains in effect.

b. After the live training session, for the life of this agreement, the Defendant will conduct annual training via the internet, by video, or other means, regarding Title VII's prohibitions against racial discrimination and retaliation, for all employees of the Distribution and Collection Division of the City's Department of Public Services (or its successor, if the

name of this entity is changed while this settlement agreement remains in effect); the Executive Management Team (*i.e.*, employees fulfilling the duties currently performed by the Internal Auditor, Director of Administrative Services, City Manager, Assistant City Managers, Finance Director, Director of Parks and Recreation, Director of Communications, Public Services Director, City Clerk, Police Chief, and Fire Chief); employees working in the Office of Professional Standards (which is responsible for reviewing or investigating discrimination complaints); and other employees with managerial responsibility for personnel and human resources matters (*i.e.*, employees fulfilling the duties currently performed by the Employee Relations Director, Assistant Employee Relations Director, Employment Manager, Personnel Director, Classifications and Compensation Manager, and Director of Organizational Training and Development). The Defendant will require every person required to attend the annual training to sign a statement certifying that he or she has received, understands, and will comply with the anti-discrimination and anti-harassment provision of Title VII. The Defendant will maintain a copy of this certification in each attendee's personnel file as long as this settlement agreement remains in effect.

INDIVIDUAL RELIEF

8. Because the Defendant and Plaintiff Elgin Jones have reached a separate settlement agreement in this case, which includes a monetary settlement to be paid to Mr. Jones, the Defendant is not required to provide individual relief to Mr. Jones as part of this settlement agreement between the Defendant and the United States. Payment to Mr. Jones of the monetary relief specified in the Defendant's agreement with Mr. Jones fully satisfies all of the United States' claims for individual relief for Mr. Jones that were or could have been alleged in the United States' complaint. The Defendant agrees to provide the United States with copies of the checks evidencing payment to Mr. Jones within ten (10) calendar days after such payment is made.

DISPUTES

9. Before either party may move the Court for resolution of a dispute under this settlement agreement, the parties shall attempt in good faith to resolve informally any disputes that may occur under this settlement agreement. If the parties are unable to reach agreement within thirty (30) days after a matter has been brought to the attention of either party by the other party, the issue may be submitted to the Court for resolution. This settlement agreement between the United States and the Defendant is not intended to confer rights on any organization or individual not a party to this case, nor does it prevent the Defendant from raising in any later lawsuit any defense otherwise available under Title VII.

RECORD-KEEPING AND REPORTING BY THE CITY OF FORT LAUDERDALE

10. Throughout the term of this settlement agreement, the Defendant will fill any vacancies for the position of Engineering Inspector I through its testing processes and without regard to the race of any applicant.

11. While this settlement agreement remains in effect, the Defendant shall maintain all records related to the filling of vacancies for Engineering Inspector I positions for each hiring event, application period, test administration, and phase of anytest administration (*e.g.*, any training and experience evaluation, competitive exam, and interview)following the entry of this settlement agreement, including, but not limited to:

- a. All applications, resumes, and any other information the Defendant receives or generates concerning each phase of the application, hiring, and/or selection process for the position of Engineering Inspector I or the background or qualifications of applicants for that position;
- b. All job interest forms filed with the City for the position of Engineering Inspector I, and the date they were received;
- c. All competitive examination and/or interviewing materials used or created in connection with any phase of the testing, application, and/or selection processes (including, but not limited to all test questions, instructions given to examinees, graders, or oral exam panelists);
- d. All documents related to changes in the application, testing, or selection process for Engineering Inspector I since the most recent selection for that position, and all documents related to the extension of the effectiveness of an Engineering Inspector I eligibility list for more than one year;
- e. The total number of applicants, by name, race, and application date;
- f. The minimum passing score for each competitive examination or other selection procedure used in selecting persons for the position of Engineering Inspector I and any documents showing how the minimum passing scores were determined;
- g. All documents, and drafts thereof, related to the method for weighting and/or combining components of the competitive selection process to calculate applicants' final scores, as well as all documents reflecting or related to how that method was determined;
- h. Any eligibility lists or drafts, and the date they were made, that are created in connection with a selection process or hiring event for the position of Engineering Inspector I;
- i. The names, races, and interview dates of any persons interviewed by a hiring or promotional authority for the position of Engineering Inspector I; and
- j. The names, races, and dates of appointment for any persons selected to fill the position of Engineering Inspector I

The Defendant shall maintain these records in a manner that allows the Defendant and the United States to identify, by month and year, the particular selection process or test administration to which each document relates. The requirement to maintain the documents listed above in this paragraph shall apply to all hiring events, test administrations, and application processes for the position of Engineering Inspector I that occur while this settlement agreement is in effect. These requirements also shall apply to test administrations, eligibility lists, and selection processes that occur before this settlement agreement takes effect if they are used to hire any person, or to eliminate any person from consideration for hire, into the position of Engineering Inspector I during the lifetime of this settlement agreement.

12. The Defendant will retain all records that come into its possession during the life of this settlement agreement relating to complaints or charges of employment discrimination based on race or retaliation filed against the Defendant or an employee, agent or representative of the Defendant: (a) through the Defendant's internal procedures; (b) with the EEOC; or (c) through or with any other federal, state or local agency authorized to receive such complaints. The Defendant will provide these records to the United States within thirty (30) days of any written request by the United States.

13. The Defendant will furnish to the United States, within thirty (30) calendar days after the United States' written request for their production, any of the records required to be maintained by the Defendant under the provisions of this settlement agreement and any other information or data necessary to monitor compliance with this settlement.

PARTIES' OBLIGATION TO DEFEND SETTLEMENT AGREEMENT

14. In the event this settlement agreement is challenged, the Defendant and the United States shall fully defend its lawfulness. If any such collateral challenge arises in State court, the Defendant shall promptly seek to remove such action to this Court.

DELIVERY

15. All documents required to be delivered under this settlement agreement to the United States shall be addressed as follows if sent by facsimile or United States mail: Charlotte Burrows, Esq.

Carolyn Clark, Esq.
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue
Attention: Employment Litigation Section
Patrick Henry Building, Room 4500
Washington, D.C. 20530
Facsimile: (202) 514-1105

If sent by Federal Express or other overnight delivery service, documents required to be delivered under this settlement agreement to the United States shall be addressed as follows:

Charlotte Burrows, Esq.
Carolyn Clark, Esq.
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
601 D Street, NW, Room 4500
Washington, D.C. 20004
(202) 514-1409.

16. All documents required to be delivered under this settlement agreement to the Defendant shall be sent to the attention of:

Harry A. Stewart, Esq.
City Attorney
City of Fort Lauderdale

P.O. Drawer 14250
Fort Lauderdale, Florida 33302

RETENTION OF JURISDICTION

17. The Court shall retain jurisdiction over this action for the purpose of resolving disputes or entering any orders or judgments that may be necessary to enforce this settlement agreement or to implement the relief provided herein, for the period of two years or the life of two complete eligibility lists for the Defendant's Engineering Inspector I exam, whichever is longer. The Defendant agrees to promptly notify the Court and the United States of the expiration of the City's second eligibility list. For purposes of this settlement agreement, the life of an eligibility list shall begin on the date that a list is first published based on the results of any Engineering Inspector I exam and shall end on the date that the list expires. Thereafter, the Court's jurisdiction shall end, and this matter shall be dismissed with prejudice unless the Court determines, upon motion by the United States filed before the settlement agreement expires, for good cause shown, that the purposes and objectives of this settlement agreement have not been accomplished, and that the settlement agreement therefore should continue in effect. Unless it would be impracticable due to the time of discovery or other reasons, the United States agrees that, not less than thirty (30) days before it files a motion to extend the settlement agreement, it will inform the Defendant of its reasons for seeking such an extension and will attempt to resolve the matter with the Defendant. If such a motion is filed by the United States, the settlement agreement shall remain in effect while the motion is pending before the Court.

APPROVED, ADOPTED, AND ENTERED this day of , _____.

THE HONORABLE DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

The signatures of the parties follow on the next page.

Agreed and Consented to:

On behalf of the Plaintiff,
United States of America:

RALPH F. BOYD, JR.
Assistant Attorney General

CHARLOTTE BURROWS
Special Bar No. A5500708
CAROLYN CLARK
Special Bar No. A5500709
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Attention: Employment Litigation Section
Patrick Henry Building, Room 4500
Washington, D.C. 20530
Telephone: (202) 514-3862

Facsimile: (202) 514-1105
charlotte.burrows@usdoj.gov
carolyn.clark@usdoj.gov

On behalf of the Defendant,
City of Fort Lauderdale, Florida:

GORDON D. ROGERS
Florida Bar No. 0240168
Muller Mintz, P.A.
200 South Biscayne Boulevard, Suite 3600
Miami, Florida 33131
Telephone: (305) 358-5500
Facsimile: (305) 358-3802
grogers@mullermintz.com

ROBYN HERMANN
Civil Chief
Florida Bar No. 0187968
Southern District of Florida
99 Northeast Fourth Street
Miami, Florida 33132
Telephone: (305) 961-9332
Facsimile: (305) 530-7976

APPENDIX A

Notice of Settlement Agreement

The United States has alleged that the City of Fort Lauderdale, Florida ("the City") violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. ("Title VII"), by failing to promote an employee on the basis of that employee's race and allowing the employee to suffer a hostile work environment because he filed an internal complaint of discrimination and a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"). The City has denied the allegations of racial discrimination and retaliation.

The City has an Office of Professional Standards, which is responsible for receiving and attempting to resolve employee complaints of unfair treatment. Any City employee or applicant who believes that he or she has been discriminated or retaliated against should contact the Office of Professional Standards at

Until March 2003:

City of Fort Lauderdale
Office of Professional Standards
634 N.E. 3rd Avenue
Fort Lauderdale, Florida 33304
Telephone: 954-828-4933

After March, 2003:

City of Fort Lauderdale
Office of Professional Standards
33 N.E. 2nd Street
Suite 100
Fort Lauderdale, Florida 33301

An employee or applicant also has the right to file a complaint with the EEOC, the Florida Commission on Human Relations, or the Broward County Human Rights Division.

This notice is being posted to announce that the United States and the City have entered into a settlement agreement regarding this matter.

Under the terms of the settlement agreement, the City has agreed:

1. Not to engage in any act or practice that unlawfully discriminates against any employee or potential employee because of that individual's race.
2. Not to retaliate against any person in a manner prohibited by § 704(a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-3(a), because that person:
 - a. made an internal complaint of discrimination;
 - b. filed a charge of discrimination with the EEOC or the Broward County Human Rights Division;
 - c. participated in or cooperated with the initiation, investigation, litigation or administration of the settlement agreement; or
 - d. provided information to the Department of Justice.
3. To revise its existing policies against discrimination to specifically prohibit harassment of any person in retaliation for filing a charge of discrimination with the EEOC or Broward County Human Rights Division; for making an internal complaint or grievance with the City alleging discrimination; or for giving testimony, providing information to the United States, or otherwise assisting or participating in any way in any investigation, proceeding or hearing under Title VII.
4. To retain all records that come into its possession relating to complaints or charges of employment discrimination based on racial discrimination or retaliation that may be filed against the City in any of the following ways:
 - (a) through the City's internal grievance procedure;
 - (b) with the EEOC; or
 - (c) through or with any other federal, state or local agency authorized to receive such complaints.

If any employee or job applicant of the City believes that he or she has been discriminated against in violation of Title VII, the employee or job applicant is encouraged to contact the City's Office of Professional Standards. An employee or job applicant also has the right to contact the EEOC and/or the Broward County Human Rights Commission about filing a charge of discrimination.

The EEOC's address is:

Equal Employment Opportunity Commission
Miami District Office
1 Biscayne Tower, Suite 2700
2 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 536-4491.

The address for the Florida Commission on Human Relations is:

Florida Commission on Human Relations 2009 Apalachee Parkway
Suite 100
Tallahassee, Florida 32301-4857
Telephone: (850) 488-7082.

The Broward County Human Rights Division's address is:

Broward County Human Rights Division
Government Center, Room 116
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (305) 357-6050.

If any employee or applicant believes that any term(s) of the settlement agreement has (have) been violated, he or she should contact the following Department of Justice attorneys:

Charlotte Burrows, Esq.
Carolyn Clark, Esq.
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue
Attention: Employment Litigation Section
Patrick Henry Building, Room 4500
Washington, D.C. 20530
Telephone: (202) 514-1409
or (202) 514-3862
Facsimile: (202) 514-1105.

APPENDIX B

Revisions to the City of Fort Lauderdale's

Policy & Standards Manual, Chapter 14, Section 1

Deletions are represented by strike-outs and proposed additions are in italics and bold print.

a. The fourth paragraph of the section entitled "Policy" in the City of Fort Lauderdale's Policy & Standards Manual, 14.1.1.1 shall be revised as follows:

Acts of unlawful discrimination, ***retaliation***, or harassment, ***including unlawful harassment of an employee because that employee opposed practices he or she reasonably believed were discriminatory***

or participated in the investigation of any complaint of discrimination or retaliation, are strictly prohibited and constitute a violation of the City's personnel standards and rules.

b. The City's definition of "Retaliation," contained in the third and fourth paragraphs of the Section labeled "Definitions" in the City of Fort Lauderdale's Policy & Standards Manual, 14.1.1.2 shall be revised as follows:

Retaliation means intentional adverse treatment of an employee, *including harassment of an employee, by a supervisor because the that* employee has reported an incident of unlawful discrimination or harassment; *filed a charge of discrimination with the EEOC, the Florida Commission on Human Relations, or the Broward County Human Rights Division; participated in or cooperated with the initiation, investigation, litigation or administration of a settlement agreement between the United States and the City of Fort Lauderdale regarding Title VII matters; or provided information regarding employment discrimination or retaliation to the Department of Justice.* It is also a violation of this policy for co-workers or supervisors to intentionally retaliate against an employee who has cooperated in an official review of a report of unlawful discrimination or harassment.

Supervisors are required to take reasonable steps to prevent employees who report incidents of what they believe to be unlawful discrimination or cooperate in an official review *or investigation of possible discrimination or retaliation or harassment because an employee opposed practices he or she reasonably believed were discriminatory or engaged in activity protected by Title VII*, from being subjected to retaliation by coworkers.

- The first paragraph under the heading "Responsibility" in the City of Fort Lauderdale's Policy & Standards Manual, 14.1.1.2 shall be revised to read:

RESPONSIBILITY Any employee who believes that she or he has been subjected to harassment by a co-worker based on unlawful discrimination or who believes she or he has been subjected to retaliation *or harassment because an employee has engaged in activity protected by Title VII*, for reporting or supporting another employee who reported an incident involving *discrimination or harassment*, is encouraged to directly inform the offending person or persons that such conduct is offensive and must stop. . . .