

CHARLES TAYLOR)
1524 NOVA AVENUE)
CAPITOL HEIGHTS, MD 20743)
)
)
)
Individually and as)
Class Representative)
)
PLAINTIFF) (HHK)
v.) Civil Action No.: 01CV0561
) **Class Action Complaint**
DISTRICT OF COLUMBIA)
WATER & SEWER AUTHORITY)
5000 OVERLOOK AVENUE, S.W.)
WASHINGTON, D.C. 20032,)
)
DEFENDANT)
)

Plaintiff Charles Taylor, individually, and as Class Representative, by and through his attorneys, sues Defendant District of Columbia Water and Sewer Authority (WASA) and for his Complaint states as follows:

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Section 2000e et seq. (Title VII), including but not limited to declaratory, injunctive and other equitable relief, and compensatory damages, litigation expenses and reasonable attorneys fees, based on Defendant's continuing deprivation of rights accorded to the named Plaintiff and members of a class of African American employees.

2. As evidence of Defendant's pattern and practice of race discrimination, Plaintiff and Class members allege the following specific examples of disparate treatment:

3. In October 1996, WASA began to operate as an independent authority of the District of Columbia government. Beginning in 1996, WASA ceased to operate under and comply with District of Columbia personnel regulations, and no longer provided civil service protection for its employees. Since 1996, WASA has adopted a system where employees are hired as "at-will" employees or has hired contractors which may be terminated at-will. During this period, WASA has hired several former white employees of the Washington Suburban Sanitation Commission ("WSSC") and other agencies and passed over qualified and experienced African Americans employees at D.C. WASA, based on licenses and certifications uniquely available to WSSC employees.

a. **Discrimination in hiring and promotions.** WASA has not adopted uniform personnel policies, and the personnel policies being utilized are not applied uniformly or fairly. WASA's written and unwritten policies and practices regarding hiring and promotions allow management nominations which amount to word of mouth recommendations and other closed procedures. Candidates are handpicked in advance and supervisors who make hiring decisions manipulate scores to ensure that their favorites are chosen. Further, African Americans are hired at the lowest level of the career ladder and are required to serve as long as five years for career ladder promotions

while white employees are hired at higher levels of the career ladder and regularly receive promotions in less than five years. As a result of this kind of discrimination, African Americans are denied the opportunity to advance to the same level and at the same rate as equally qualified Caucasian employees.

b. **Glass Ceiling.** At WASA, African American employees experience a "glass ceiling" or barrier to equal opportunity advancement. Few African-Americans advance to senior levels in the Agency, especially when compared to the significant representation of African Americans among salaried employees. Although African Americans make up approximately 75 percent of the employees in the Agency, they are under-represented at higher pay grades.

4. This discrimination represents an Agency-wide pattern and practice, rather than a series of isolated incidents. Defendant's written and unwritten policies and practices regarding hiring, compensation and promotion subject the named Plaintiff and the Class to ongoing disparate treatment, and have a disparate impact on African American employees. WASA's actions constitute a continuing violation of the rights of the named Plaintiff and the Class, and have been ongoing since October 1996.

Jurisdiction and Venue

5. This action arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq. (Title VII). Jurisdiction is founded on 42 U.S.C. Section 1981, and 42 U.S.C. Section 2000e, 28 U.S.C. Sections 1331 and 1343(3) and (4). The Court has jurisdiction to grant declaratory and further relief pursuant to 28 U.S.C. Sections 2201 and 2202.

6. Venue is proper in the district court pursuant to 28 U.S.C. Section 1391(b) and 1391(c) in that all or some of the events or omissions giving rise to Taylor's claims occurred in the District of Columbia, and defendant may be found in this judicial district.

Parties

7. Charles Taylor is a citizen of the United States and a resident of the State of Maryland, and a representative of Class members who are African American employees at WASA.

8. Defendant D.C. WASA is an independent authority of the Defendant District of Columbia government, responsible for overseeing water and sewer operations for the District of Columbia. WASA employs approximately 1300 employees, and approximately 900 or 75% of those employees are African American. Plaintiff and the Class members complaint concerns the actions of senior managers at WASA.

Individual Factual Allegations

9. Plaintiff Taylor is an African American male with 13 years of employment at WASA and its predecessor. Taylor is employed with Defendant WASA in Washington, D.C., as a civil engineering technician, DS-8, in WASA's Office of Engineering Services. Taylor's position progresses from a DS-2 to DS-11. Progression to each level is based on the employee performing at the next level and a recommendation from the individual's supervisor that the employee should be promoted.

10. Throughout his tenure, Taylor performed his job in an exemplary manner and performed many duties performed by a civil engineer. Taylor applied for several promotions during his tenure. In 2000, Taylor was supervised by Londra Watson, an African American male. In June 2000, Watson wrote a letter of recommendation

requesting that Taylor be promoted to the DS-09 level because Taylor had demonstrated the skill and ability to perform at the next higher level and had the required time in grade. On August 22, 2000, Leonard Benson, white male, who served as the Director of the Department of Engineering and Technical Services, denied the request. During this same period and over a number of years, Taylor observed that similarly situated Caucasians were hired at higher grades than blacks, promoted without serving any specific time within grade for career ladder promotions, while blacks were required to work five years for each career ladder promotion, and frequently promoted over blacks who were more experienced and qualified.

11. On September 19, 2000, Taylor filed a charge of race discrimination with the EEOC alleging denial of promotion and retaliation, and class based claims against the Agency. Taylor has exhausted all administrative remedies and has been issued a right to sue letter by the EEOC. This complaint has been filed within 90 days of receipt of the right to sue letter.

CLASS ACTION ALLEGATIONS

12. Plaintiff brings this Class action on behalf of himself and all others similarly situated, for the purpose of asserting the claims alleged in this Complaint on a common basis. Plaintiff's proposed class is defined as all African Americans **who were employed by the Defendant District of Columbia Water and Sewer Authority at any time after October 1, 1996 and who have been or may be subjected to the Defendant's policies and practices challenged herein.**

13. This action is brought and may properly be maintained as a Class action pursuant to the provisions of Federal Rules of Civil Procedure 23(a)(1)-(4) and, as appropriate,

23(b)(1), (b)(2) and/or (b)(3). This action satisfies the numerosity, commonality, typicality, adequacy and predominance and superiority requirement of those provisions.

14. Numerosity of the Class. Fed. R. Civ. P. 23(a)(1). The Class is so numerous that the individual joinder of all its members is impracticable. WASA has approximately 1300 employees, approximately 900 are black. Plaintiff believes, from his research, that during the period October 1996 through December 2000, WASA has taken personnel actions with adverse consequences on all African American employees. As a result, there are potentially 900 members of the proposed class. Joinder of all class members is therefore impracticable. The precise number of potential class members can be calculated more accurately from WASA's records.

- a. requiring black employees to work longer than whites for career ladder promotions;
- b. hiring white employees at higher grades and salaries than black employees;
- c. disproportionately hiring whites and non-blacks for manager positions to the exclusion of black employees;
- d. failing to evaluate employees which places existing black employees at a disadvantage when promotion and hiring decisions are made;
- e. utilization of selection and hiring criteria which favor white employees from WSSC and other entities, while excluding black employees at WASA.

15. Existence and Predominance of Common Questions of Law and Fact. Fed. R. Civ. P. 23(a) and 23(b)(3). Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting only individual members of the

Class. These common legal and factual questions arise from one central issue, which does not vary from Class member to Class member and which may be determined without reference to the individual circumstances of any particular Class member. These common legal and factual questions include, but are not limited to the following:

a) Whether Defendant's institutional and systematic failure to provide Plaintiff and Class members equal employment opportunity when Defendant:

- i requires black employees to work longer than whites for career ladder promotions;
- ii. hires white employees at higher grades and salaries than black employees;
- iii. disproportionately hires whites and non-blacks for manager positions to the exclusion of black employees;
- iv. fails to evaluate employees which places existing black employees at a disadvantage when promotion and hiring decisions are made;
- v. utilizes selection and hiring criteria which favor white employees from WSSC and other entities, while excluding black employees at WASA.

b) Whether Defendant's actions violated Plaintiff and the Class members' rights under Section 1981 of the Civil Rights Act of 1871, as amended by the Civil Rights Act of 1991, 42 U.S.C. Section 1981 ("Section 1981"), and Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq. (Title VII);

c) Whether Plaintiff and Class members are entitled to (1) a declaration of their eligibility to receive damages or other monetary relief; (2) costs; (3) attorneys fees; and (4) interest from the date they should have been paid to the actual date of payment; and

d) How any and all payments Plaintiff and Class members are declared eligible to receive should be equitably allocated among the Class.

16. Typicality of Claims. Fed. R. Civ. P. 23(a)(3). Plaintiff's claims are typical of the claims of the members of the Class, all of whom have been denied equal access to equal employment opportunities, and have been subject to Defendant's institutional and systematic failure to enforce the civil rights laws intended to benefit Plaintiff and members of the Class, due to Defendant's arbitrary and unlawful actions.

17. Adequacy of Representation. Fed. R. Civ. P. 23(a)(4). Plaintiff is an adequate representative of the Class because he is a member of the Class and his interests do not conflict with interests of the members of the Class he seeks to represent. Plaintiff has retained competent counsel experienced in the prosecution of EEO disputes, experienced in civil rights litigation and class actions, and they intend to prosecute this action vigorously for the benefit for the Class.

18. The Class will be represented by the Law Offices of David A. Branch, P.C. in this matter. The firm has three attorneys, David A. Branch, Stanley Osborne, Jr. and Bobbie James-Hoye. Mr. Branch served as a staff attorney for the U.S. Court of Appeals for the District of Columbia Circuit for three years following a judicial clerkship and has been in private practice for seven years. Mr. Branch has served as lead counsel in approximately 40 employment discrimination cases before the EEOC and local administrative agencies, and state and federal court. The Law Offices of David A. Branch, P.C. is one of several firms representing Black Farmers against the USDA in Pigford v. Glickman, C.A. 97-1978 (PLF). Mr. Osborne is a graduate of Wake Forest Law School, with six years of

practice and experience in EEO matters. Ms. James-Hoye is a graduate of the University of Pittsburgh Law School and practices employment discrimination law.

19. The interests of the members of the Class will be fairly and adequately protected by Plaintiff and Lead Counsel.

Superiority. Fed. R. Civ. P. 23 (b) (2) and (3).

20. WASA has acted and failed to act on grounds generally applicable to the proposed class. The racially discriminatory practices described in paragraphs above, which prevent African Americans from progressing through positions at WASA, have impacted and continue to impact the entire class in the same general fashion. The pattern and practice of discrimination challenged herein also includes WASA's failure to adopt adequate means of auditing decisions to detect patterns of discrimination and its failure to create adequate EEO incentives and disincentives for its managers, both of which are generally applicable to the class.

21. As a result, appropriate final injunctive and declaratory relief will be appropriate for the class as a whole.

22. The requested injunctive and declaratory relief predominates over other forms of requested relief in this action because such injunctive and declaratory relief, which is broad and detailed in scope, is crucial in bringing defendant into compliance with the law and to remedying the effects of WASA's unlawful conduct.

23. A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual litigation of Class members claims regarding the defendant's institutional and systematic deprivation of their civil rights as described in this Complaint is impracticable. Individual litigation further presents a

potential for inconsistent and contradictory judgments and increases the delay and expenses to all parties and the court system in resolving the legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication of what essentially is one problem, economies of scale, and comprehensive supervision by a single court. Notice of the pendency of any resolution of this class action can be provided to class members by publication; in addition, Defendant has the class members' addresses and personnel files on computer, readily available.

24. The various claims asserted in this action are additionally or alternatively certifiable under the provisions of Federal Rules of Civil Procedure 23(b)(1) and 23(b)(2) because:

a) The prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual Class members, thus establishing incompatible standards of conduct for Defendant;

b) The prosecution of separate actions by individual Class members would create a risk of adjudications that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or would substantially impair or impede the ability of such non-party Class members to protect their interests; and

c) Defendant has acted on grounds generally applicable to the Class, thereby making appropriate final declaratory relief with respect to the Class as a whole.

Plaintiff's Claims

The Civil Rights Act of 1866, 42 U.S.C. Sec. 1981

25. Plaintiff realleges and incorporates by reference paragraphs 1 through 24 above as if set forth fully herein.

26. WASA has denied Plaintiff and all members of the proposed class the same right to make and enforce contracts as enjoyed by white citizens employed at WASA, including rights involving the making, performance, modification, and termination of contracts with WASA and the enjoyment of all benefits, privileges, terms, conditions, of that relationship, in violation of the Civil Rights Act of 1866, 42 U.S.C. Sec. 1981, as amended.

27. In the employment practices described above, WASA acted in intentionally, maliciously, and with willful, wanton and reckless indifference to the federally protected rights of the named Plaintiff and the members of the class they represent. Intentional discrimination against African Americans seeking higher positions has been and continues to be a standard operating procedure within WASA.

28. As a result of the acts of WASA described above, the named Plaintiff and the members of the class they represent have suffered and continue to suffer harm, including but not limited to financial loss, humiliation, embarrassment, emotional distress and mental anguish.

29. By reason of WASA's discrimination, Plaintiff and members of the proposed class are entitled to all legal and equitable remedies under Sec. 1981, as amended.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e et seq.

30. Plaintiff realleges and incorporates by reference paragraphs 1 through 29 above as if set forth fully herein.

31. WASA has discriminated against plaintiff and all members of the proposed class with respect to the compensation, terms, conditions or privileges of employment, and has limited, segregated, or classified class members in ways that deprive or tend to deprive them of employment opportunities and otherwise adversely affect their status as employees, all because of their race, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e et seq., as amended by the Civil Rights Act of 1991.

32. In the employment practices described above, WASA acted in intentionally, maliciously, and with willful, wanton and reckless indifference to the federally protected rights of the named Plaintiff and the members of the class they represent. Intentional discrimination against African Americans seeking higher positions has been and continues to be a standard operating procedure within WASA.

33. Defendant's promotional decisionmaking and compensation practices challenged herein, the elements of which are not capable of separation for analysis, has had and continues to have a disparate impact on the basis of race. These employment practices are not job related for the positions in question and are not consistent with business necessity.

34. As a result of the acts of WASA described above, the named Plaintiff and the members of the class they represent have suffered and continue to suffer harm, including but not limited to financial loss, humiliation, embarrassment, emotional distress and mental anguish.

35. By reason of WASA's discrimination, Plaintiff and members of the proposed class are entitled to all legal and equitable remedies under 42 U.S.C. Sec. 2000e, as amended by the Civil Rights Act of 1991.

Prayer for Relief

WHEREFORE, Plaintiff Taylor and the Class members pray as follows:

- A. Enter judgment against the Defendant;
- B. That the court issue an order certifying the Class, and any appropriate subclass thereof, under the appropriate provisions of Fed. R. Civ. P. 23, and appointing Plaintiff (class representatives) and David A. Branch and the Law Offices of David A. Branch, P.C. as Lead Counsel to represent the Class;
- C. That the court issue an Order declaring Defendant's actions to be a violation of Plaintiff's rights under Title VII of the Civil Rights Act of 1964, as amended and Section 1981, as amended, and declaring Plaintiff and Class members eligible to receive equitable and other relief;
- D. Issue a permanent injunction prohibiting WASA and its officers, agents, employees, and successors from engaging in any discriminatory hiring, promotion or compensation employment practices;
- E. Order WASA to restrain from any retaliation against plaintiff or class members, or any other person, for participating in or supporting this case in any manner;
- F. Enter judgment in favor of Plaintiff and class members against WASA for all equitable monetary damages available under the law, including but not limited to back pay and front pay in amounts to be determined at trial;

- G. Order WASA to pay compensatory and punitive damages in amounts to be determined at trial.
- H. Order WASA to pay pre-judgment and post-judgment interest as provided by law.
- I. Retain jurisdiction for five years or until such time as the court is satisfied that WASA has remedied the practices complained of herein and is determined to be in full compliance with the law.

Respectfully submitted,

_____/s_____
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DATED: November 13, 2007
Washington, DC

JURY DEMAND

Plaintiff demands a jury trial on all counts.