

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

GEORGE McREYNOLDS, MAROC)	FILED: OCTOBER 24, 2008
HOWARD, FRANKIE ROSS, MARVA YORK,)	08CV6105
LEROY BROWN, GLENN CAPEL, CARNELL)	JUDGE KENNELLY
MOORE, MARK JOHNSON and CATHY)	MAGISTRATE JUDGE ASHMAN
BENDER-JACKSON, on behalf of themselves)	EDA
and all others similarly situated,)	
)	Jury Trial Demanded
Plaintiffs,)	
)	
v.)	
)	
MERRILL LYNCH & CO., INC.,)	
MERRILL LYNCH, PIERCE, FENNER &)	
SMITH, BANK OF AMERICA)	
CORPORATION)	
)	
Defendants.)	
)	

COMPLAINT

Plaintiffs George McReynolds, Maroc Howard, Frankie Ross, Marva York, Leroy Brown, Glenn Capel, Carnell Moore, Mark Johnson and Cathy Bender-Jackson, on behalf of themselves and all others similarly situated, by and through their attorneys, Stowell & Friedman, Ltd., hereby file this Complaint against Defendants, and state as follows:

JURISDICTION AND VENUE

1. Plaintiffs' claims arise under 42 U.S.C. Section 1981 and Title VII.¹ This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343.

¹ Plaintiffs have filed representative charges of race discrimination with the Equal Employment Opportunity Commission ("EEOC"). After they have exhausted their administrative remedies, Plaintiff will seek leave to amend the Complaint to formally include race and gender discrimination claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.* ("Title VII"). Plaintiffs are aware of others similarly situated who are relying on his charge and on this lawsuit.

2. Venue is proper in the Northern District of Illinois pursuant to 28 U.S.C. §1391(b). Defendants' unlawful conduct took place nationwide, including in this District, and Defendants are licensed to do business and maintain a number of branch offices in this District.

PARTIES

3. Defendant Merrill Lynch & Co., Inc. is a financial services holding company, incorporated in Delaware and headquartered in New York, whose subsidiaries provide financial and investment services. Its subsidiary, Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated, is a full service securities firm engaged in the retail and institutional sale of securities, options contracts and various other financial products. Collectively, Merrill Lynch & Co., Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated are herein referred to as "Merrill Lynch." Merrill Lynch employs nearly 17,000 persons nationwide as Financial Advisors ("FAs" or "brokers") who sell its products and services at its offices located throughout the country, including in Chicago, Illinois. Merrill Lynch is the country's largest provider of brokerage and brokerage-related services. Merrill Lynch is a publicly traded, Fortune 100 corporation incorporated in Delaware with retail branches across the United States.

4. Defendant Bank of America Corporation ("Bank of America") is a financial services company incorporated in Delaware and headquartered in North Carolina that provides a wide variety of banking and investment services.² Collectively, Bank of America Corp. and its affiliates and subsidiaries are herein referred to as "Bank of America."

5. On September 15, 2008, Bank of America and Merrill Lynch announced that

² Bank of America will succeed Merrill Lynch as Plaintiffs' employer and will assume liability for Merrill Lynch's unlawful conduct, as well as its own actions.

Bank of America would acquire Merrill Lynch for approximately \$50 billion in an all-stock transaction.

6. Plaintiffs are African-America Financial Advisors currently employed at Merrill Lynch. Plaintiffs Marva York and Cathy Bender Jackson are female Financial Advisors currently employed at Merrill Lynch.

ALLEGATIONS

7. As part of Bank of America's acquisition of Merrill Lynch, Bank of America and Merrill Lynch announced that they would pay retention bonuses to Merrill Lynch FAs. In a broadcast to all of the Firm's Financial Advisors, senior executive Robert McCann and Daniel Sontag announced that retention bonuses will be based on a FA's "production," in essence, commissions earned on client assets managed by the FA.

8. Merrill Lynch ranks and segregates its Financial Advisors by placing them in quintiles. The FAs who have the highest 20% of production are in the "first quintile" of production, and the FAs who have the lowest 20% in production are in the "fifth quintile" of production. Merrill Lynch relies on these quintile rankings to distribute a variety of business opportunities, benefits and resources.³

9. Merrill Lynch has and is engaged in a nationwide pattern and practice of race and

³ Based on its quintile system and production, Merrill Lynch determines eligibility for titles, offices, sales assistance, distributions of accounts of departing brokers, leads, walk-ins, referrals, IPO opportunities, membership in partnerships or teams, recognition clubs, expense allowance, and managerial support. Merrill Lynch relies on this system even though it believes that its customers' bias impacts the performance of African-American brokers on account of the brokers' race. Favorable treatment garners commissions, which are then used to justify even more favorable treatment. For example, if a broker is given account distributions that generate commissions, the commissions earned from the donated accounts will entitle him to even more account distributions and other perks. Success breeds success at Merrill Lynch, and African-Americans are excluded from significant income earning opportunities giving rise to greater success due to Merrill Lynch's discriminatory employment practices. Through these practices, Merrill Lynch intentionally perpetuates its own discrimination and any bias that may exist in society.

gender discrimination and employs policies and practices that have a disparate impact on African-American and female Financial Advisors. As a result of its systemic discrimination, African Americans and women have less production and are in lower quintiles of production than white men. As a result, the recently announced retention bonus procedure disadvantages African Americans and women and disproportionately advantages white males as favored employees whose retention is more important to Bank of America and Merrill Lynch than the retention of African-Americans and women.

10. Merrill Lynch's long history of systemic discrimination against African American and women is well known. As a result of a hostile corporate culture and policies and practices that steer business opportunities and resources to white men, African Americans and women are disproportionately situated in lower quintiles of production and so earn less than white men. Through Merrill Lynch's own internal studies as well findings and expert reports in a number of well-publicized legal proceedings, Defendants are well aware of the negative employment outcomes of African Americans and women as FAs, including their lower levels of production and overrepresentation in lower quintiles of production.

11. According to public documents, in 1974, the Equal Employment Opportunity Commission sued Merrill Lynch based on its refusal to employ women, African Americans and Latinos as brokers. To resolve the lawsuit, Merrill Lynch agreed to the entry of a Consent Decree (the "*O'Bannon* Consent Decree") that required Merrill Lynch to increase its representation of African-American brokers to 6.5%. On information and belief, Merrill Lynch has never met the goals to which it agreed in the *O'Bannon* Consent Decree. Indeed, more than 30 years later when this suit was filed, only 2% of the tenured brokers employed by Merrill Lynch are African-American. The representation of African-American brokers at

Merrill Lynch is greater than 20 standard deviations below the goal in the 1978 EEOC Consent Decree and more than 10 standard deviations below the percentage representation in the industry, as reflected in EEOC census data. The probability of these disparities in representation occurring in a race-neutral or random selection is zero. Because of the high attrition resulting from Merrill Lynch's systemic discrimination, the percentage of Merrill Lynch brokers with tenure in excess of ten years who are African-American is approximately 0.5%.

12. In 1996, a class of female FAs sued Merrill Lynch for systemic sex discrimination in *Cremin v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 957 F.Supp. 1460 (N.D. Ill. 1997) (Castillo, J.). Pursuant to the court-approved Stipulation of Settlement ("Stipulation"), an alternative dispute resolution process was established for class members to pursue their individual and class discrimination claims of discrimination, the Claim Resolution Process (the "CRP").

13. As part of the *Cremin* CRP, Merrill Lynch's pattern and practice of gender discrimination was fully litigated and decided by well-qualified arbitration panels. Every *Cremin* arbitration panel who considered the class-wide statistical evidence held that Merrill Lynch had engaged in a pattern or practice of sex discrimination against female FAs. For example, in 2004, an arbitration panel ruled in favor of *Cremin* class member Hydie Sumner and awarded her \$2,203,822 in damages, including punitive damages. *See Ex. A, Sumner v. Merrill Lynch Decision and Award*, at 6. In reaching this award, the *Sumner* Panel held Merrill Lynch liable for gender discrimination on both the class and individual claims. Specifically, the *Sumner* Panel ruled as follows:

[T]he record clearly and convincingly supports Sumner's allegations of a pattern and practice of gender discrimination adversely affecting the pay of

female FC's. The class-wide statistical evidence demonstrates gross disparities in earnings between male and female FC's. ...

Having considered the class-wide statistical evidence and reports and testimony of experts, the [P]anel finds that these statistically significant disparities in earnings between male and female FC's are not explained by non-discriminatory factors. Rather, the Panel finds that the disparate earnings of females and males were the result of Merrill's discriminatory practices including, but not limited to an unequal distribution of accounts to female FC's (see Dr. Madden's report and testimony) and a male-dominated organizational structure at Merrill which created an environment in which managerial discretion was influenced by gender stereotypes adversely affecting female FC's ([s]ee reports of Dr. Bielby and Dr. Fiske). ...

[T]he Panel finds that the record clearly supports Sumner's allegations of class-wide discrimination against female FC's with respect to promotions to management positions.

(Ex. A, at 6-7)(emphasis added).

14. As more recently alleged in the class action lawsuit *McReynolds et al. v. Merrill Lynch*, (N.D. Ill.) (Gettleman, J.), Merrill Lynch is engaged in a nationwide pattern or practice of race discrimination and maintains employment practices and policies that have a disparate impact on African Americans.

15. As a result of racial discrimination, there are compensation disparities between African American and white Financial Advisors as follows:

Annual Compensation Percentage Differences		Standard Deviations
2001	African American brokers were paid 33.57% less	6.57
2002	African American brokers were paid 36.53% less	7.37
2003	African American brokers were paid 33.23% less	6.73
2004	African American brokers were paid 37.98% less	8.03
2005	African American brokers were paid 41.81% less	9.05
2006	African American brokers were paid 42.34% less	9.07

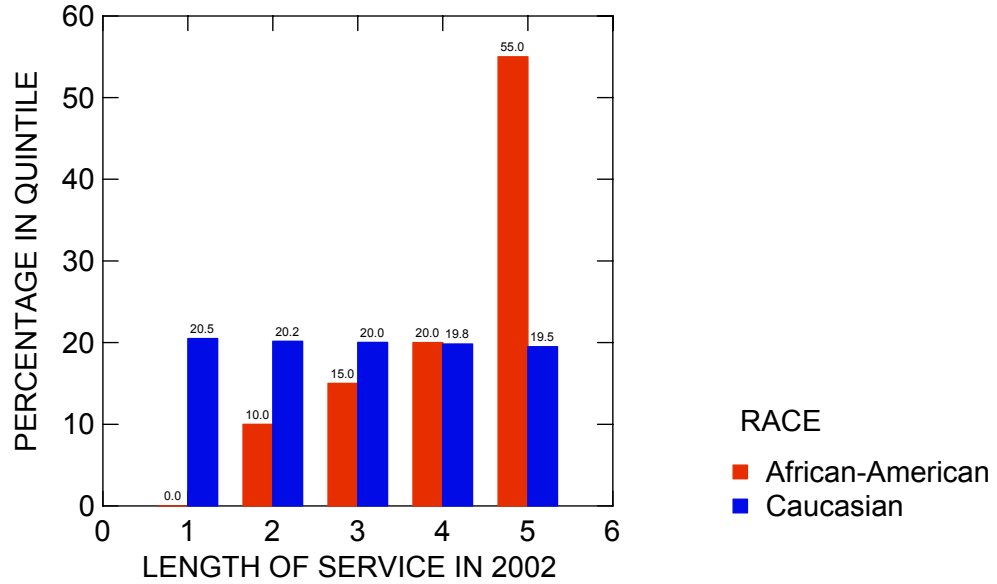
17. The *McReynolds* plaintiffs allege that Merrill Lynch maintains stereotypical views about African-Americans that form the basis of personnel decisions and create an environment where occupational segregation, differential treatment and harassment are pervasive and condoned. As a result of Merrill Lynch biased culture, African-Americans are denied the same business opportunities and managerial, sales and administrative support as their male colleagues. Merrill Lynch also employs discriminatory policies and practices with regard to partnerships and the distribution of resources and business opportunities such as accounts, leads, referrals, walk-ins, call-ins, and initial public offerings (“IPOs”). For example, Merrill Lynch managers regularly steer accounts, productive assets and other income-generating opportunities to white brokers, and away from Africa-American brokers. Merrill Lynch’s discriminatory policies and practices result in lower production and diminished performance rankings for African-American brokers whose production would be equal or superior to that of similarly situated white brokers if Merrill Lynch distributed assets and opportunities equitably.

18. Consistent with Defendants’ systemic unlawful treatment of African-Americans, Merrill Lynch has failed to provide Plaintiffs with the same opportunities to succeed and advance as white brokers. Plaintiffs have not received the same level of resources, mentoring, managerial and sales support, or income-generating opportunities as white brokers. Moreover, like other African-Americans at Merrill Lynch, Plaintiffs have been excluded from favorable partnerships and subjected to a racially biased corporate culture and work environment in which African-Americans are treated as inferior. As a result, African American FAs are underrepresented, earn lower production, and populate disproportionately

lower quintiles.

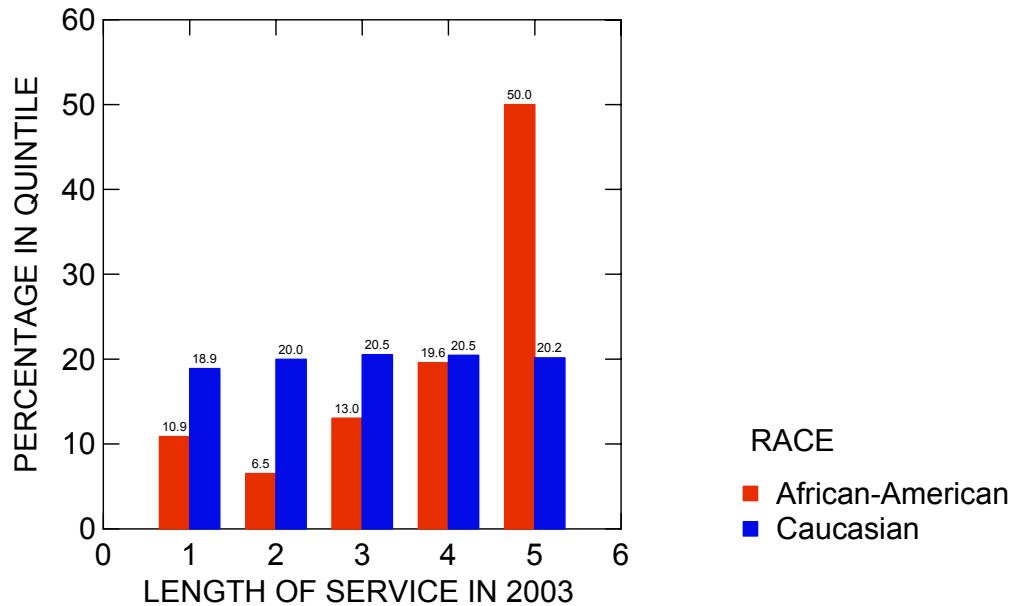
19. The following chart reflects that in 2003 there were no African-American brokers with six to nine years tenure in the first quintile but 55% in the fifth quintile:

DISTRIBUTION OF LOS 6-9 FCs BY QUINTILE AND RACE



19. Likewise, in 2003, of the African-Americans who survived the Firm's discriminatory employment practices for more than 10 years, 50% were in the fifth quintile as compared to 20% of Caucasian brokers:

DISTRIBUTION OF LOS 10+ FCs BY QUINTILE AND RACE



20. Based on the above publicly available information, as well as its Merrill Lynch’s own studies and expert reports produced in the *McReynolds* lawsuit based on the Firm’s own data, Bank of America was well aware of Merrill Lynch’s discriminatory practices and their impact, and the small number of African-American FAs and their low production rankings. Nevertheless, Defendants intentionally chose to employ retention bonuses that intentionally discriminated against African Americans and women. Defendants identified and selected for higher compensation the FAs it would try hardest to retain via the retention bonuses and knew that they were offering more generous retention packages to white men than to African Americans and women. Simply put, Defendant intended to retain white men while not retaining African Americans and women. Further, the retention bonuses for African American Financial Advisors and women, even those in the higher quintiles, are lower than they would have been but for intentional racial discrimination.

21. Plaintiffs will be harmed as a result of Merrill Lynch's and Bank of America's discriminatory award of retention packages.

22. Defendants have acted or failed to act as herein alleged with malice or reckless indifference to the protected civil rights of Plaintiffs. Plaintiff and the class are thus entitled to recover punitive damages in an amount to be determined by a jury.

CLASS ALLEGATIONS

23. Plaintiff bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class of African-American FAs of Merrill Lynch/Bank of America in the United States who have been subjected to discrimination by Defendants due to their race and have been subjected to retaliation due to their opposition to discrimination.

24. Plaintiff is a member of the class he seeks to represent. The proposed class is so numerous that joinder of all members is impracticable.

25. There are questions of law and fact common to the class, and those questions predominate over individual questions.

26. The claims alleged by the plaintiff are typical of the claims of the class.

27. Plaintiff will fairly and adequately represent and protect the interests of the class.

28. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

COUNT I

RACE DISCRIMINATION IN VIOLATION OF 42 U.S.C. SECTION 1981

29. Plaintiff and all others similarly situated reallege the above paragraphs as thought stated herein and incorporate them by reference in Count I of this Complaint.

30. Plaintiff and all others similarly situated were paid lower wages than non-African-American Financial Advisors.

31. Plaintiffs and all others similarly situated reallege paragraphs 1 through 53 and incorporate them by reference as though fully stated herein as part of Count II of this Complaint.

32. Section 1977 of the Revised Statutes, 42 U.S.C. Section 1981 as amended guarantees all persons the same right to make and enforce contracts as non-African-Americans. The term “make and enforce” contracts includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of contractual relationship.

33. By their conduct as alleged herein, Defendants discriminated against Plaintiffs and all others similarly situated with respect to their wages in violation of 42 U.S.C. Section 1981.

PRAYER FOR RELIEF

41. WHEREFORE, Plaintiff respectfully requests that this Court find in favor of him and the class and against Defendant as follows:

- a. Certify this case as a class action;
- b. Designate Plaintiffs as Class Representatives and designate Plaintiffs’ counsel of record as Class Counsel;
- c. Declare that Defendant’s acts, conduct, policies and practices are unlawful and violate Section 1981;
- d. Order appropriate equitable and injunctive relief to remedy the discrimination;
- e. Award Plaintiff and all others similarly situated the value of all compensation and benefits lost and that they will lose in the future as a result of Defendants’ unlawful conduct;

- f. Award Plaintiffs and all others similarly situated punitive damages, compensatory and other damages;
- i. Award Plaintiffs and all others similarly situated prejudgment interest and attorneys fees, costs and disbursements, as provided by law;
- j. Award Plaintiff and all others similarly situated such other make whole equitable, injunctive and legal relief as this Court deems just and proper to end the discrimination and fairly compensate Plaintiffs.
- k. Award Plaintiff and all others similarly situated such other relief as this Court deems just and proper.

DEMAND FOR A JURY TRIAL

Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Respectfully submitted on behalf of Plaintiffs and those similarly situated,

/s/ Linda D. Friedman

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