

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILE

MICHAEL McCRAY
~~6287 F. Supp. 2d 111 (D.C. 2000)~~
~~111 F. Supp. 2d 111 (D.C. 2000)~~
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Plaintiff,

v.

UNITED STATES DEPARTMENT
OF AGRICULTURE
14th and Independence Avenue, SW
Washington, DC 20250

and

DANIEL GLICKMAN, in his
official capacity as Former
Secretary, US Department
of Agriculture
14th and Independence Avenue, SW
Washington, DC 20250

and

VICTOR VASQUEZ, in his
official capacity as Former
Deputy Assistant Secretary
of Defense Pentagon, Rm 3A119
Washington, DC 20301-4000

and

J. NORMAN REID, in his
official capacity
US Department of Agriculture
300 7th Street, SW, Rm 701
Washington, DC 20024

and

JOHN DEAN, in his
official capacity as Former
Director US Department of
Agriculture
300 7th Street, SW, Rm 701
Washington, DC 20024

THIRD AMENDED COMPLAINT

Civil Action No. 00-426 TPJ

JURY TRIAL DEMANDED

and)
)
OTHER UNKNOWN MEMBERS of)
the United States Department)
of Agriculture, in their)
official capacity)
300 7th Street, SW, Rm 701)
Washington, DC 20024)
)
)
Defendants.)
-----)

COMPLAINT (THIRD AMENDED)

1. The jurisdiction of this Court is invoked pursuant to 28 U.S. C. Sections 1331, 1343 and 2201 for injunctive and declaratory relief and to secure protection from and to redress deprivations of rights secured by:

a. Civil Rights Act of 1866, Section 1981 providing for the protection of African-American citizens from deprivation of rights because of their race;

b. Civil Rights Act of 1871, 42 U.S.C. Section 1985(3), providing for redress for conspiracy to violate rights secured to Plaintiff under the Constitution and laws of the United States;

c. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000d et. seq., providing protection from and redress for race discrimination under a program or activity receiving federal financial assistance;

d. Fifth Amendment to the Constitution of the United States;

e. Civil Rights Attorney Fees Act of 1976, 42 U.S.C. Section 1988.

2. The unlawful discriminatory practices, deprivations of

civil and constitutional rights, and tortuous acts complained of herein were committed and continue to be committed within the District of Columbia.

3. The pendent jurisdiction of the Court is invoked to redress claims arising under the laws of the District of Columbia because the claims arise out of the same operative facts and are such that Plaintiff would be expected to litigate them in one and the same judicial proceeding. Venue is appropriate under 28 U.S.C. § 1391(b) as defendants reside in the District of Columbia Metropolitan Area and the events giving rise to the claims occurred in the District of Columbia.

4. The amount in controversy, excluding costs and attorney fees, exceeds \$100,000.

PARTIES

5. Plaintiff, Michael McCray, is an African-American male citizen of the United States who presently resides at 6307 Ridgewood Drive, Pine Bluff, AR 71603. At the time the initial Complaint was filed, March 17, 2000, Claimant resided at 7305 Sheffield Drive, Temple Hills, MD 20748.

6. At all times relevant hereto, Plaintiff, Michael McCray, was employed by the Community Outreach Services/Office of Community Development, in Washington, DC (hereinafter 'Employer'). Employer is administered by Defendant, USDA.

7. At all times relevant hereto, Defendant, USDA, received federal funding to finance its programs.

8. Defendant, USDA, is a federal agency created by the laws

of the United States. Defendant, USDA, at all times relevant herein had administrative authority over Employer, a comprehensive Economic and Community Development Initiative.

9. Defendant, USDA, maintains its principle office for administration at 14th and Independence Avenue, SW, Washington, DC, 20250.

10. Defendant, Daniel Glickman (hereinafter "Glickman") is a Caucasian male adult individual maintaining his primary place of employment in the United States Department of Agriculture. located at 14th and Independence Avenue, SW, Washington, DC, 20250. Defendant, Glickman's, place of residence is unknown.

11. Defendant, Victor Vasquez, (hereinafter "Vasquez") is an Hispanic male adult individual maintaining his primary place of employment in the United States Department of Defense located at 4000 Defense Pentagon, Room 3A119. Washington, DC 20301. Defendant, Vasquez's, place of residence is unknown.

12. Defendant, J. Norman Reid, (hereinafter "Reid") is a Caucasian male adult individual maintaining his primary place of employment in the United States Department of Agriculture. located at 300 7th Street, SW, Room 701, Washington, DC, 20024. Defendant, Reid's, place of residence is unknown.

13. Defendant, John Dean, (hereinafter "Dean") is an African-American male adult individual maintaining his primary place of employment in the United States Department of Agriculture. located at 300 7th Street, SW, Room 701, Washington, DC, 20024. Defendant, Dean's, place of residence is unknown.

14. Defendant, Unknown Members of the United States Department of Agriculture, (hereinafter "Unknown Members"), are primarily Caucasian male adult individuals collectively maintaining their primary place of employment in the United States Department of Agriculture. located at 300 7th Street, SW, Room 701, Washington, DC, 20024. Defendant, Unknown Members', places of residence are unknown.

15. At all times relevant hereto, Defendant, USDA, was the recipient of federal funding from the U.S. Government, in part, to finance the operations of Employer and subject to the anti-discrimination laws of the United States.

16. At all times relevant hereto, Defendant, Glickman, was acting in his official capacity as Secretary of the United States Department of Agriculture.

17. At all times relevant hereto, Defendant, Vasquez, was acting in his official capacity as the Deputy Assistant Secretary of Defense with primary responsibility as Plaintiff's second line supervisor.

18. At all times relevant hereto, Defendant, Reid, was acting in his official capacity as Plaintiff's first-line supervisor with primary responsibility for Plaintiff's assignments, review and professional development.

19. At all times relevant hereto, Defendant, Dean, was acting in his official capacity as the Director of the United States Department of Agriculture, with primary responsibility for Plaintiff's assignments, review and professional development.

20. At all times relevant hereto, Defendant, Unknown Members, were acting in their official capacities.

21. At all times relevant hereto, Defendant, USDA, was a "person" within the meaning 42 U.S.C. Section 1981.

22. At all times relevant hereto, Defendants maintained through habit, custom, prior practices, rules, and/or regulations, a policy and practice of denying Plaintiff employment reviews, formal job descriptions, salary increases and promotions.

FACTUAL BACKGROUND

a. Lack of performance appraisals

23. In May, 1994, Plaintiff was hired as a graduate student intern GS-9 by Employer. Plaintiff was hired for a term not to exceed September 1995.

24. On January 8, 1995, Employer extended Plaintiff's term appointment not to exceed January, 1999. The extension was due to Plaintiff's exceptional work performance.

25. Plaintiff requested a performance appraisal and the update of his position description to reflect his responsibilities, duties and assignments as required by USDA Regulations.

26. Defendant, Reid, denied Plaintiff's request for a performance appraisal and the updating of his position description.

27. Plaintiff continued to work for Employer. Plaintiff made significant contributions. He drafted legislation, researched state of the art internet uses for administrative rule-making, such as the use of e-mail and electronic signatures. He designed the

induction training curriculum for new rural development employees.

29. As the year progressed, Plaintiff again requested a performance appraisal, salary increase and an update of his position description.

30. Defendant, Reid, again ignored Plaintiff's request.

31. Based upon information provided by the USDA, and through the individually named Defendants, Plaintiff avers that the USDA has written policy regarding employee performance appraisals and position descriptions.

32. Plaintiff avers that the USDA's employee and personnel regulations are unambiguous; that the Defendant's failure to provide periodic performance appraisals and updated position description is arbitrary; that the Defendant's application of USDA's employee and personnel regulations is discriminatory.

33. Plaintiff avers that the USDA's failure, through the individually named Defendants, to provide periodic performance appraisals and updated position descriptions is based on his race (African-American).

34. Plaintiff avers that the Defendant's implementation of USDA's employee and personnel regulations violates the USDA's Affirmative Action and Non-discrimination policies and/or other policies that prevent the deliberate and arbitrary actions of the USDA, through the individually named Defendants.

35. Plaintiff avers that the USDA's failure, through the individually named Defendants, to implement the USDA employee and personnel regulations that safeguards the guarantees of the USDA's

Affirmative Action and Non-discrimination policies and/or other policies that prevent the deliberate and arbitrary actions of the USDA, through the individually named Defendants is based on his race (African-American).

36. Plaintiff also avers that the USDA's failure, through the individually named Defendants, to provide him with updated position description is pursuant to a practice and policy of the USDA, through the individually named Defendants, during and before Plaintiff's employment to prevent the advancement of African-American employees at the USDA.

37. Plaintiff avers that the USDA's failure, through the individually named Defendants, to implement the USDA employee and personnel regulations that safeguards the guarantees of the USDA's Affirmative Action and Non-discrimination policies and/or other policies that prevent the deliberate and arbitrary actions of the USDA, through the individually named Defendants is pursuant to a practice and policy of the USDA, through the individually named Defendants, during and before Plaintiff's employment to prevent the advancement of African-American employees at the USDA.

38. Plaintiff further avers that this systematic withholding of performance appraisals and updated position descriptions has thereby deprived him of access to promotions; non-discriminatory educational and training opportunities guaranteed by the USDA's Affirmative Action and Non-discrimination policies and/or other policies that prevent the deliberate and arbitrary actions of the USDA, through the individually named Defendants; fair and equal

44. Plaintiff avers that the tactics of the USDA, through the individually named Defendants, of delaying, hindering and preventing his promotion and professional advancement violates the USDA's Affirmative Action and Non-discrimination policies and/or other policies that prevent the deliberate and arbitrary actions of the USDA, through the individually named Defendants.

45. Plaintiff avers that the USDA's failure, through the individually named Defendants, to establish, maintain and enforce the USDA's Affirmative Action and Non-discrimination policies and/or other policies that prevent the deliberate and arbitrary actions of the USDA, through the individually named Defendants is pursuant to a practice and policy of the USDA, through the individually named Defendants, during and before Plaintiffs' employment to prevent the advancement of African-American employees at the USDA.

46. Plaintiff avers that the USDA's tactics, through the individually named Defendants, of hindering, delaying and preventing his promotion and professional advancement is pursuant to a practice and policy of the University, through the individually named Defendants, during and before Plaintiffs' matriculation to prevent the advancement of African-American students at the University.

47. Plaintiff further avers that the systematic efforts of the USDA, through the individually named Defendants of hindering, delaying and preventing African-American employees from promotion and professional advancement has thereby deprived him of access to

employment opportunities; non-discriminatory educational and training opportunities guaranteed by the USDA's Affirmative Action and Non-discrimination policies and/or other policies that prevent the deliberate and arbitrary actions of the USDA, through the individually named Defendants; fair and equal opportunities to compete for employment and training opportunities; fair and equal opportunities to compete for promotions and professional growth; fair and equal opportunities to monetary reward and value for work performed.

COUNT I

RACE DISCRIMINATION

48. The averments of paragraphs 1 through 47 are incorporated by reference herein as if same were fully set out here.

49. Defendants, jointly and severally, did intentionally and knowingly discriminate against and conspire to discriminate against Plaintiff, as more fully set out above, but in the generally described fashion: denying Plaintiff fair opportunities to compete for employment and training and purposely hindering, delaying and preventing Plaintiff from promotions and professional advancement; providing insufficient and inadequate performance appraisals and updated position descriptions to Plaintiff, but assigning sufficient adequate performance appraisals and updated position descriptions to Caucasian employees; in violating its own policies, rules, and regulations to prevent Plaintiff from competing for promotions and other employment opportunities; violating Plaintiff's USDA guaranteed rights and privileges to Non-

discriminatory educational and training opportunities; denying Plaintiff property without procedural and substantive due process of the law.

50. Said discriminatory conduct on the part of Defendants, jointly and severally, constituted a violation of rights secured to Plaintiff under the Civil Rights Acts of 1871, 1866, and 1964 and the federal anti-discrimination laws regulating Defendant's practices generally and Defendant's practices under a program or activity receiving federal assistance.

51. Defendants acted in an outrageous and systematic manner in discriminating against and depriving Plaintiff of his rights and in conspiring to do so.

COUNT II

CONSPIRACY

52. The averments of paragraphs 1 through 47 are incorporated by reference herein as if same were fully set out here.

53. Defendant, Vasquez, did conspire with Defendants Reid, Dean and Unknown Members to deprive Plaintiff of any opportunity to compete for promotions and other employment opportunities in the particulars set out above, because of his race (African-American), and with the express intent and purpose of denying to Plaintiff the benefits, terms, conditions, and privileges of employment, and opportunity for education and training extended to Caucasian employees.

54. Defendant, Vasquez, further conspired with Defendants, Reid, Dean, and Unknown Members to deprive Plaintiff, as set out in

the foregoing paragraph, because of his race (African-American), by perpetuating the discriminatory practices as set out heretofore.

55. The Actions of Defendants, in conspiring against Plaintiff, deprived Plaintiff of rights secured to him under the Civil Rights Act of 1871 and deprived Plaintiff of the rights and benefits Defendants accorded Caucasian employees and further deprived him of rights secured to him under the laws and Constitutions of the United States.

COUNT III

DENIAL OF DUE PROCESS

56. The averments of paragraphs 1 through 47 are incorporated by reference herein as if same were fully set out here.

57. All of the Aforementioned acts and omissions of the Defendants herein complained of by Plaintiff were performed or committed by Defendants, jointly and severally, and in their official capacities.

58. Defendants in acting to deprive Plaintiff of his aforesaid rights, acted intentionally, knowingly, willfully, and with complete disregard of Plaintiff's rights, in ratifying and condoning the racially discriminatory treatment of and deprivation of Plaintiff's rights.

59. As the direct result of Defendants' actions, Plaintiff suffered the injuries and damages set out above.

COUNT IV

EMOTIONAL DISTRESS

60. The averments of paragraphs 1 through 47 are incorporated

by reference herein as if same were fully set out here.

61. Defendants intentionally inflicted the aforesaid acts of racial discrimination, harassment, and deprivations of Plaintiff's rights with malice, without any legal, economic, business or social justification or excuse, for the sole purpose of depriving Plaintiff of obtaining professional and promotional opportunities thereby causing him severe emotional distress and anguish.

62. Plaintiff's failure to compete for employment and promotional opportunities arising out of the tortuous behavior of Defendants, caused Plaintiff emotional distress and anguish, which continues to the present time.

63. As a further result of Defendant's tortuous conduct, Plaintiff suffered great emotional distress and anguish that resulted in Plaintiff having to incur psychological damages and distress.

64. Defendants' tortuous conduct was intentional, willful, malicious, and with complete disregard for the consequences to Plaintiff, thereby entitling Plaintiff to punitive and exemplary damages, in addition to compensatory and pecuniary damages.

COUNT V

CONSTRUCTIVE DISCHARGE

65. The averments of paragraphs 1 through 47 are incorporated by reference herein as if same were fully set out here.

66. Defendants, in acting to deprive Plaintiff of his rights, as set out hereinbefore, acted intentionally, knowingly, willfully, wantonly, and with complete disregard of Plaintiff's rights secured

to him by virtue of the Constitution and statutory provisions of the Constitution of the United States prohibiting race discrimination created a hostile environment from which Plaintiff had no choice but to resign.

67. The intentional, willful, wanton, malicious conduct of Defendants, as set out hereinbefore, in complete disregard of or for the civil rights and well-being of Plaintiff, thereby entitling Plaintiff to punitive and exemplary damages.

COUNT V

PUNITIVE DAMAGES

68. The averments of paragraphs 1 through 47 are incorporated by reference herein as if same were fully set out here.

69. Defendants, in acting to deprive Plaintiff of his rights, as set out hereinbefore, acted intentionally, knowingly, willfully, wantonly, and with complete disregard of Plaintiff's rights secured to him by virtue of the Constitution and statutory provisions of the Constitution of the United States prohibiting race discrimination and the aforementioned unlawful, illegal, retaliatory conduct by Defendants and of the injurious consequences to Plaintiff.

70. The intentional, willful, wanton, malicious conduct of Defendants, as set out hereinbefore, in complete disregard of or for the civil rights and well-being of Plaintiff, thereby entitling Plaintiff to punitive and exemplary damages.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, as follows:

a. Declaring, pursuant to 28 U.S.C. Section 2201 that Defendants violated rights secured to Plaintiff under the Fifth Amendment to the U.S. Constitution, the Civil Rights Acts of 1866, 1871, and 1964 and other federal laws prohibiting discrimination on the basis of race;

b. Declaring, pursuant to 28 U.S.C. Section 2201 that Defendants violated rights secured to Plaintiff under the federal laws prohibiting discrimination on the basis of race under any program receiving federal funding;

c. Granting a temporary and permanent injunction prohibiting Defendants, their employees, servants, agents and those acting in concert with, for or in their behalf from pursuing and continuing their illegal, unlawful, discriminatory, and unconstitutional practices against Plaintiff and African-American employees in general;

d. Granting a temporary injunction enjoining Defendants from using federal funds in connection with pursuing and continuing their illegal, unlawful, discriminatory and unconstitutional practices against Plaintiff and African-American employees in general;

e. Ordering Defendants to make whole Plaintiff by providing appropriate affirmative relief to eradicate to effects of its unlawful discriminatory practices, including but not limited to awarding corrected personnel records to adequately reflect Plaintiff's four year work history at GS-13 level, allowi

discretionary authority to approve Plaintiff's application for a USDA grant, program or loan, reinstate Plaintiff to a GS-14 career position with full rights bestowed.

f. Awarding Plaintiff compensatory, pecuniary and punitive damages under the Civil Rights Acts of 1866 and 1871;

g. Awarding Plaintiff compensatory, pecuniary and punitive damages for the intentional infliction of severe emotional and mental distress;

h. Awarding Plaintiff compensatory, pecuniary and punitive damages for the harm to his professional and personal credit and existence.

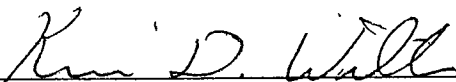
i. Awarding Plaintiff reasonable attorney fees, costs and disbursements of this action; AND

j. Granting Plaintiff such further relief as the Court may deem just and proper under the circumstances.

JURY TRIAL DEMAND

Plaintiff requests a jury trial on all questions of fact raised by his complaint.

Respectfully submitted,


Kirk D. Williams, Esquire
D.C. Bar No.: 467951¹
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Washington, DC 20011
(202) 726-0480
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¹Admission by Motion of the Court pending approval of formal application.

CERTIFICATE OF SERVICE

I certify under penalty of perjury, that I caused to be delivered, by first class mail, copies of the foregoing Amended Complaint to the following defendants on November 2, 2001:

John Ashcroft
US Attorney General
950 Pennsylvania Avenue, NW
Washington, DC 20001


Daniel Glickman - Former Secretary
US Department of Agriculture
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