

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS, FLORIDA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
LEE COUNTY, FLORIDA,)
)
Defendant.)
_____)

Civil Action No.: _____
JURY TRIAL DEMANDED

2:12-cv-67-FtM-295PC

COMPLAINT

Plaintiff United States of America ("United States"), alleges:

1. This action is brought on behalf of the United States to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* ("Title VII").

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 42 U.S.C. § 2000e-5(f), § 2000e-6(b), and 28 U.S.C. § 1345, and thus this judicial district is an appropriate venue for this action.

3. Defendant Lee County, Florida ("Lee County" or the "County") is a governmental body created pursuant to the laws of the State of Florida and located within this judicial district.

4. Lee County 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).

5. The United States Equal Employment Opportunity Commission (“EEOC”) received timely charges (Charge Nos. 510-2009-06030, 510-2009-06031, and 510-2009-06033) filed by charging parties Marco Ferreira, Eduardo Rivera, and Leonides Sepulveda (collectively, the “Charging Parties”) on October 8, 2009, August 26, 2009, and August 26, 2009, respectively, alleging that Lee County discriminated against them on the basis of their race and national origin (Hispanic) when they were subjected to racial and ethnic harassment by their coworkers while employed by the County. Pursuant to Section 706 of Title VII, 42 U.S.C. § 2000e-5, the EEOC investigated the charges, found reasonable cause to believe that the Charging Parties’ allegations of racial and ethnic harassment were true, attempted unsuccessfully to achieve through conciliation a voluntary resolution of the charges, and subsequently referred the matters to the Department of Justice.

CLAIM FOR RELIEF

6. Lee County’s Facilities Management and Maintenance and Repair Service (“Facilities Management”) employs Tradesworkers who perform maintenance work for Lee County.

7. Ferreira began his employment as a Tradesworker in Lee County’s Facilities Management department in or around July 1999.

8. Rivera began his employment as a Tradesworker in Lee County’s Facilities Management department in or around April 2002.

9. Sepulveda began his employment as a Tradesworker in Lee County’s Facilities Management department in or around July 2003.

10. The Charging Parties' direct supervisors were Facilities Supervisors Jesus Caride and Tim Hasty. Caride and Hasty reported to Manager of Facilities Operations Jack Whitmore until approximately September 2008, and Manager of Facilities Operations Otto Demuth after September 2008. Whitmore and Demuth reported to Director of Facilities Management Richard Beck, and Beck reported to Director of Public Works James Lavender.

11. Ferreira, Rivera, and Sepulveda are Hispanic.

12. Beginning in or around January 2007, several of the Charging Parties' coworkers including but not limited to Tradesworkers Tony Cira, Ed Fergason, James Raimbault, Ken Sager, Corey Sellers, and Ray Valdes, regularly subjected the Charging Parties to harassing conduct including: racial and ethnic slurs; mocking Ferreira's and Rivera's accents; refusing to perform work assigned by Rivera; and making false accusations against Ferreira and Rivera to Lee County's Office of Equal Opportunity in an effort to get the County to terminate the two employees.

13. The Charging Parties complained to their immediate supervisors Caride and Hasty on numerous occasions about the harassment. Caride, Hasty, and Whitmore also observed the harassment on several occasions. However, Caride, Hasty, and Whitmore failed to take any meaningful steps to correct the harassing behavior or discipline the harassers.

14. On or around September 5, 2008, the Charging Parties and several other Facilities Management employees met with Lavender, Beck, and Human Resources Manager Christine Brady to report the harassment. The County took no action to investigate their

allegations. Instead, Lee County held a meeting of Facilities Management employees to remind them of the County's harassment policy. Lee County's actions were insufficient and ineffective, and the harassment actually increased in frequency.

15. On or around December 24, 2008, Sepulveda complained to Demuth, this time about an incident during which Raimbault and Sellers made racially derogatory remarks in reference to Sepulveda outside his office. In part due to this complaint, in or around January 2009, Lee County hired an outside investigator, Debra Ragin-Jessup, to conduct an investigation into allegations that certain Facilities Management employees were subjecting other Hispanic Facilities Management employees to a hostile work environment.

16. On or around January 28, 2009, Ragin-Jessup issued a report concluding that "Hispanic American employees in the Facilities Management Division have been and continue to be subjected to conduct by their co-workers that constitute racial harassment and would support a claim for 'hostile work environment' under Title VII of the Civil Rights Act of 1964."

17. Based on Ragin-Jessup's report, Lee County finally fired the harassing employees. However, all but one of the harassing employees have since been reinstated.

18. Lee County has discriminated against the Charging Parties on the basis of their race and national origin, in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), among other ways by:

- (a) subjecting the Charging Parties to racial and ethnic harassment during their employment with the County that adversely affected the terms, conditions, and privileges of employment; and
- (b) failing or refusing to take prompt remedial action to correct the effects of the discriminatory treatment.

19. All conditions precedent to filing of suit have been performed or have occurred.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court grant the following relief:

- (a) Enjoin Lee County from further discriminating against the Charging Parties;
- (b) Award compensatory damages to the Charging Parties to fully compensate them for the pain, suffering, and physical ailments caused by Lee County's discriminatory conduct, pursuant to and within statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a;
- (c) Order Lee County to take remedial steps to ensure a non-discriminatory workplace for all Facilities Management employees, including implementation of an appropriate discrimination and harassment policy, and providing adequate training to all employees and officials regarding the handling of discrimination and harassment complaints; and
- (d) Award such additional relief as justice may require, together with the United States' costs and disbursements in this action.

JURY DEMAND

Plaintiff United States hereby demands a jury trial of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

Dated: February 6, 2012

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

By: /s/ Delora L. Kennebrew
DELORA L. KENNEBREW, GA Bar No.
414320
Chief
Employment Litigation Section
Civil Rights Division

/s/ Esther G. Lander
ESTHER G. LANDER, DC Bar No. 461316
Deputy Chief
Employment Litigation Section
Civil Rights Division

/s/ Brian G. McEntire
/s/ Carol A. Wong
BRIAN G. MCENTIRE, VA Bar No. 48552
Trial Counsel
Senior Trial Attorney
CAROL A. WONG, IL Bar No. 6294123
Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
Room 4908, PHB
950 Pennsylvania, Ave., NW
Washington, DC 20530
Telephone: (202) 305-1470
Facsimile: (202) 514-1105
E-mail: Brian.McEntire@usdoj.gov

ROBERT E. O'NEILL
United States Attorney

By: /s/ Kyle S. Cohen
KYLE S. COHEN, FL Bar No. 0829951
Assistant United States Attorney
Middle District of Florida
2110 First Street, Suite 3-137
Fort Myers, FL 33901
Telephone: (239) 461-2245
Facsimile: (239) 461-2219
E-mail: Kyle.Cohen@usdoj.gov

Attorneys for the United States of America