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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

:

Plaintiff, :

: **COMPLAINT**

- v. - :

: 02 Civ.

CITY OF NEW YORK and NEW YORK CITY :

DEPARTMENT OF PARKS AND : **Jury Trial Demanded**

RECREATION, :

:

Defendants. :

:

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Plaintiff, United States of America (the "United States"), upon information and belief, alleges for its complaint as follows:

NATURE OF THE CASE

1. This is an action brought by the United States 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").

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. § 2000e-6 and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district under 28 U.S.C. § 1391.

THE PARTIES

4. Defendant, the City of New York (the "City"), is an employer within the meaning of 42 U.S.C. § 2000e(b).

5. Defendant, New York City Department of Parks and Recreation ("Parks"), is an agency of the City, and is an employer, or an agent of an employer, within the meaning of 42 U.S.C. § 2000e(b).

6. Plaintiff, the United States, is authorized to commence suit against an employer pursuant to 42 U.S.C. § 2000e-6 when the Attorney General of the United States has reasonable cause to believe that the employer has violated Title VII by engaging in a pattern or practice of unlawful discrimination.

PATTERN OR PRACTICE OF DISCRIMINATION

7. Parks engages in a pattern or practice of discrimination against its black and Hispanic employees on the basis of their race and/or national origin in making promotion decisions.

A. Failure to Post Vacancy Notices, Solicit Applications, or Conduct Interviews

8. Parks fails to follow any objective, formalized guidelines or procedures for determining which employees to promote to management positions.

9. Parks' stated policy is to post vacancy notices anytime there is a job opening for a managerial position in order to solicit applications for the vacant position.

10. Contrary to its stated policy, however, Parks has repeatedly failed to post vacancy notices announcing job openings for its vacant managerial positions.

11. As a corollary to its pattern and practice of not posting notices for vacant management positions,

Parks engages in a pattern or practice of not conducting formal interviews for those positions.

12. According to its own Equal Employment Opportunity Policy ("EEOP"), Parks is required to conduct panel interviews and use a prescribed rating system in making its promotional decisions.

13. Contrary to that policy, however, Parks rarely, if ever, conducts panel interviews for vacant management positions.

14. Rather, Parks' pattern or practice with respect to vacant management positions is that its senior managers, including the Parks Commissioner and his executive staff, seek out and promote whites to management positions without conducting any formal interview process and in disregard of Parks' own EEOP.

15. For example, in and around 1995, Lynda Ricciardone, a white employee, was promoted to Center Manager of the Asser Levy Recreation Center ("Asser Levy") despite never having applied for that position. Contrary to its stated policies, including the EEOP, Parks promoted Ricciardone without ever having posted a vacancy notice, solicited applications, or conducted a formal interview process for the position.

16. Ricciardone was later promoted to Deputy Chief of Recreation for Manhattan, and then to Chief of Recreation for Manhattan. Again, Parks promoted Ricciardone to these positions without ever having posted vacancy notices, solicited applications, or conducted a formal interview process.

17. Similarly, Christopher Caropolo, another white employee, who began working at Parks in 1993 in a low-level clerical position at Asser Levy, was promoted to Deputy Center Manager at Asser Levy in 1994, then to Center Manager at the East 54th Street Recreation Center ("East 54th Street") in 1997, and then to Deputy Chief of Recreation for Manhattan in 1998, without ever having to respond to a posting, or submit an application. Again, Parks promoted Carapolo to these positions without ever having posted vacancy notices, solicited applications, or conducted a formal interview process.

18. In addition, Dorothy Lewandowski, a white employee, was promoted to Chief of Operations for the Bronx when then-Parks Commissioner Henry Stern called her and informed her that she was being promoted from Deputy Chief of Operations for Queens. Again, Parks promoted Lewandowski to this position without ever having posted a vacancy notice, solicited applications, or conducted a formal interview process.

19. Further, Parks promoted Keith Kerman, a white employee, to Director of Managed Competition, and then to Citywide Chief of Operations. Again, Parks promoted Kerman to these positions without ever having posted vacancy notices, solicited applications, or conducted a formal interview process.

20. Similarly, Susan Silvestro, a white employee, was promoted to Chief of Administrative Services for Parks' "5-Boro Office." Parks promoted Silvestro to this position without ever having posted a vacancy notice, solicited applications, or conducted a formal interview process.

B. The "Class Of" Program

21. Parks uses its "Class Of" program in furtherance of its pattern or practice of discrimination against black and Hispanic employees, creating a separate promotional track for white Class Of participants whom Parks recruits directly from college.

22. In comparison to Parks' overall workforce, the composition of the Class Of program is disproportionately white and non-Hispanic.

23. Although many Class Of members leave Parks after two years to pursue other employment or continue their education, those Class Of members who chose to continue their employment with Parks routinely and swiftly have been promoted into high level permanent positions throughout the agency - over equally or more qualified black and Hispanic veteran employees.

24. Parks promotes Class Of participants to management positions for which it never posts vacancy notices, seeks applications, or conducts a formal interview process. Indeed, certain management positions are created specifically for Class Of recruits, so that it is impossible for anyone else to apply, interview, and be considered for the positions.

25. For example, within the span of two years, Stacy Leimas, a white Class Of member, was promoted from Parks' Recruitment Coordinator, to Aide to the Senior Advisor to the Commissioner, to Director of Work Experience Program ("WEP") Operations, a newly created position. Parks hand picked Leimas for these positions without affording black and Hispanic employees an opportunity to apply.

26. Parks replaced Leimas as Director of WEP Operations with Janice Felderstein, another white Class Of member who had been working for Parks for only a couple of years. Again, Parks selected Felderstein for this position without affording black and Hispanic employees an opportunity to apply.

27. Parks promoted K.C. Sahl, a white Class Of member, to become the first Manager of Washington Square Park (a job that had not previously existed), to Parks Recreation Manager, and then to Deputy Chief of Operations for Brooklyn. Parks selected Sahl for these positions without affording black and Hispanic employees an opportunity to apply.

28. Parks promoted Chris Clouden, a white Class Of member, who had been working for Parks for only two or three years, to replace Lynda Ricciardone in June 2000 as Chief of Recreation for Manhattan. Parks selected Clouden for this position without affording black and Hispanic employees an opportunity to apply.

29. Parks promoted Chris Trevino, a white Class Of member who had been working for Parks for only one or two years, to Parks Recreation Manager in the Bronx. Parks selected Trevino for this position without affording black and Hispanic employees an opportunity to apply.

C. Individuals Injured by Parks' Discriminatory Promotion Policies

30. Parks' promotion policies discriminate against qualified black and Hispanic employees who have been excluded from seeking promotional opportunities, including, but not limited to, the three individuals discussed below.

Paula Loving

31. For example, Paula Loving is a 37 year-old black woman who was employed full-time at Parks from 1987 through December 1999.

32. Prior to leaving Parks, Loving had been working for approximately seven years as the citywide coordinator for Parks' component of the City's WEP. As such, Loving had been responsible for overseeing the daily operations of Parks' component of WEP in all five boroughs.

33. In 1997, Parks created and filled the position of Director of WEP Operations, a position which was never posted and for which no interviews were held.
34. Parks selected Stacy Leimas, a white woman and Class Of recruit, to be Director of WEP Operations.
35. Contrary to its own stated policies, Parks promoted Leimas to the position of Director of WEP Operations without posting the position, soliciting applications, or conducting a formal interview process.
36. As Director of WEP Operations, Leimas performed many of the same job duties Loving was already performing or had performed in the past as citywide WEP coordinator.
37. Loving was equally or more qualified than Leimas to be Director of WEP Operations, but Parks never considered Loving for the promotion.
38. Had Parks posted a vacancy notice for the position, Loving would have applied.
39. In the summer of 1998, Parks replaced Leimas as Director of WEP Operations with Janis Felderstein, another white woman and Class Of recruit.
40. Contrary to its own stated policies, Parks promoted Felderstein to the position of Director of WEP Operations without posting the position, soliciting applications, or conducting a formal interview process.
41. Loving was equally or more qualified than Felderstein to be Director of WEP Operations, but Parks never considered Loving for the promotion.
42. Had Parks posted a vacancy notice for the position, Loving would have applied.

Robert Wright

43. Robert Wright is a 46 year-old black man who has been a Parks employee in the Recreation Division since 1979.
44. Wright has vast recreation experience, including coordinating youth recreation programs throughout the City, and managing recreation centers in Queens and Manhattan.
45. Wright is currently working as a Park Recreation Manager at Marcus Garvey Park in Manhattan.
46. In 1995, Mr. Wright sought to transfer from Queens to Manhattan, and spoke with then-Assistant Commissioner of Recreation Rosemarie O'Keefe about the desired transfer.
47. O'Keefe initially offered Wright a choice of recreation centers to manage in Manhattan.
48. Wright chose Asser Levy. At the time, the Center Manager position at Asser Levy was vacant although Parks had not posted a vacancy notice announcing the opening of the position.
49. Asser Levy, located in lower Manhattan, is one of Parks' premier recreation centers. Because of its prominence, the position of Center Manager at Asser Levy often serves as a stepping stone to higher

promotions.

50. Although O'Keefe initially agreed to transfer Wright to the Asser Levy manager position, a week or two later, she told Wright that the position was not available, and that his choices for transfer were limited to four recreation centers in predominantly black and Hispanic communities.

51. When Wright asked O'Keefe why he had to make another choice, she responded "you just have to." As a result, Wright chose to become the Center Manager for the Hansborough Recreation Center in Harlem.

52. Shortly after O'Keefe rescinded Wright's transfer to Asser Levy, Parks promoted Lynda Ricciardone, a white woman, to Center Manager at Asser Levy.

53. Ricciardone had not even applied for the Asser Levy Center Manager position; rather, Parks offered her the position after she interviewed for a different position in the Operations Division.

54. Wright was equally or more qualified than Ricciardone to be Center Manager at Asser Levy.

55. Since 1995, the Center Manager position at Asser Levy has been vacant on at least two occasions. Contrary to its own stated policies, Parks failed to post vacancy notices, solicit applications, or conduct a formal interview process for the position on either occasion.

56. Had Parks posted vacancy notices announcing the positions, Wright would have applied. Instead, on each occasion, a white employee who did not submit an application for the position was appointed Center Manager of Asser Levy.

Angelo Colon

57. Angelo Colon is a 48 year-old Hispanic man who has been a Parks employee since approximately 1988. Colon currently holds the position of Maintenance and Operations Coordinator.

58. In or around 1996, Colon became the Acting Center Manager at East 54th Street. East 54th Street, located in Manhattan, is one of Parks' premier recreation centers. Because of its prominence, the position of Center Manager at East 54th Street often serves as a stepping stone to higher promotions.

59. In 1997, while Colon was Acting Center Manager at East 54th Street, his supervisor, Deputy Chief of Recreation Ricciardone, rated him "excellent" in every category and commented that "Mr. Colon has always gone above and beyond in any situation. He is currently . . . doing an exceptional job."

60. Nonetheless, in the spring of 1997, Ricciardone transferred Colon to the Center Manager position of the Thomas Jefferson Recreation Center at 112th Street and First Avenue in Harlem - a far less prominent recreation center with significantly fewer resources than East 54th Street.

61. Almost immediately thereafter, Ricciardone promoted Christopher Caropolo, a white employee, to Center Manager of East 54th Street.

62. Colon was equally or more qualified than Caropolo to be Center Manager at East 54th Street.

63. Contrary to its own stated policies, Parks failed to post a vacancy notice, solicit applications, or

conduct a formal interview process for the East 54th Street Center Manager position.

64. Had Parks posted a vacancy notice announcing the position, Colon would have applied.

65. As a result of Parks' discriminatory pattern or practice with respect to promotion decisions, qualified black and Hispanic employees seeking promotions have been denied the opportunity even to learn of vacancies, let alone apply for them and be considered for promotion.

66. As a result of Parks' discriminatory pattern or practice with respect to promotion decisions, white employees are promoted to management positions to the exclusion of qualified black and Hispanic employees.

Conditions Precedent to Suit

67. All conditions precedent to the filing of this suit have been satisfied.

CLAIM FOR RELIEF

Pattern and Practice of Discrimination

68. Paragraphs 1 through 67 are realleged and incorporated herein by reference.

69. Defendants have engaged in a pattern or practice of employment discrimination in violation of 42 U.S.C. § 2000e-2(a) that has the purpose or effect of excluding qualified blacks and Hispanics from opportunities for promotion within Parks.

Jury Demand

70. The United States hereby demands a trial by jury 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.

WHEREFORE, the United States, prays that this Court enter judgment:

- A. awarding compensatory damages to individuals injured by defendants' discriminatory conduct;
- B. enjoining defendants from engaging in discriminatory employment practices in violation of Title VII, and requiring that Parks provide a fair, open, and competitive selection process for promotions;
- C. directing defendants to take such other affirmative steps as may be necessary to prevent and to remedy employment discrimination and the patterns or practices of discrimination in employment identified above; and
- D. granting such further relief as the Court may deem just, together with the United States' costs and disbursements in this action.

Dated: New York, New York

_____, 2002

JOHN D. ASHCROFT

Attorney General

By: _____

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