

JUDGE McHENRY

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

NEWMARK & COMPANY REAL ESTATE,  
INC.,

Defendant,

and

KALABI REALTY COMPANY,

Defendant.

CIVIL ACTION NO.

C O M P L A I N T

JURY TRIAL DEMAND

DEC 02 1996

U.S.D.C. S.D. N.Y.

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of race, national origin and retaliation, as well as breach of a settlement agreement, and to make whole Roy Lindsay and Carlos Rodriguez. The Commission alleges that the Defendants discriminated against Roy Lindsay because of his race, Black, and retaliated against him because he previously filed a discrimination charge, by harassing him, denying him equal terms and conditions of employment, and discharging him. The Commission also alleges that the Defendants discriminated against Carlos Rodriguez because of his national origin, Hispanic, by harassing him and denying him equal terms and conditions of employment.

### JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706(f)(3) of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 2000e-5(f)(1) and (3), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981A.

2. The employment practices alleged to be unlawful were and are now being committed within the jurisdiction of the United States District Court for the Southern District of New York.

### PARTIES

3. Plaintiff, Equal Employment Opportunity Commission (hereinafter, the "Commission"), is an agency of the United States of America charged with the administration, interpretation and enforcement of Title VII and is expressly authorized to bring this action by 706(f)(3) of Title VII, 42 U.S.C. § 2000e-5(f)(3).

4. At all relevant times, Defendant Newmark & Company Real Estate, Inc. (hereinafter, "Newmark") has continuously been and is now a New York corporation doing business in the State of New York and the City of New York City and has continuously had at least fifteen employees.

5. At all relevant times, Defendant Kalabi Realty Company (hereinafter, "Kalabi") has continuously been and is now a New York County partnership doing business in the State of New York and the

City of New York City and has continuously had at least fifteen employees.

6. At all relevant times, Defendant Newmark has continuously been an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e-(b), (g) and (h).

7. At all relevant times, Defendant Kalabi has continuously been an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e-(b), (g) and (h).

8. At all relevant times, Defendant Newmark has been an agent of Defendant Kalabi within the meaning of Section 701(b) of Title VII, 42 U.S.C. § 2000e-(b).

9. At all relevant times, Defendant Newmark and Defendant Kalabi were joint employers of Roy Lindsay and Carlos Rodriguez.

#### STATEMENT OF CLAIMS

10. More than thirty days prior to the institution of this lawsuit, Roy Lindsay and Carlos Rodriguez filed charges with the Commission alleging violations of Title VII by the Defendants. All conditions precedent to the institution of this lawsuit have been fulfilled.

11. Since at least March 1995 Defendant Newmark has engaged in unlawful employment practices at its New York City facility and at a Kalabi facility in New York City, in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1). Defendant

Newmark discriminated against Roy Lindsay because of his race, Black, by:

- a. Harassing him,
- b. Denying him equal terms and conditions of employment, and
- c. Discharging him.

12. Since at least March 1995 Defendant Newmark has engaged in unlawful employment practices at its New York City facility and at a Kalabi facility in New York City, in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a). Defendant Newmark retaliated against Roy Lindsay because he previously filed a discrimination charge, by:

- a. Harassing him,
- b. Denying him equal terms and conditions of employment, and
- c. Discharging him.

13. Since at least March 1995 Defendant Newmark breached a Negotiated Settlement Agreement between itself, Roy Lindsay, and the Commission at its New York City facility and at a Kalabi facility in New York City by retaliating against Roy Lindsay because he previously filed a discrimination charge, by:

- a. Harassing him,
- b. Denying him equal terms and conditions of employment, and
- c. Discharging him.

14. Since at least August 1994 Defendant Newmark has engaged in unlawful employment practices at its New York City facility and at a Kalabi facility in New York City, in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1). Defendant Newmark discriminated against Carlos Rodriguez because of his national origin, Hispanic, by:

- a. Harassing him, and
- b. Denying him equal terms and conditions of employment.

15. Since at least March 1995 Defendant Kalabi has engaged in unlawful employment practices at one of its New York City facilities in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1). Defendant Kalabi discriminated against Roy Lindsay because of his race, Black, by:

- a. Harassing him,
- b. Denying him equal terms and conditions of employment, and
- c. Discharging him.

16. Since at least March 1995 Defendant Kalabi has engaged in unlawful employment practices at one of its New York City facilities in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a). Defendant Kalabi retaliated against Roy Lindsay because he previously filed a discrimination charge, by:

- a. Harassing him,
- b. Denying him equal terms and conditions of employment, and

c. Discharging him.

17. Since at least August 1994 Defendant Kalabi has engaged in unlawful employment practices at one of its New York City facilities in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1). Defendant Kalabi discriminated against Carlos Rodriguez because of his national origin, Hispanic, by:

a. Harassing him and

b. Denying him equal terms and conditions of employment.

18. The effect of the practices complained of above has been to deprive Roy Lindsay and Carlos Rodriguez of equal employment opportunities and otherwise adversely affected their status as employees, because of race, national origin and opposition to unlawful employment practices.

19. The unlawful employment practices complained of in paragraphs numbered 11 through 17 above were intentional.

20. The unlawful employment practices complained of in paragraphs numbered 11 through 17 above were done with malice or with reckless indifference to the federally protected rights of Roy Lindsay and Carlos Rodriguez.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Newmark & Co. Real Estate, Inc., its officers, successors, assigns, and all persons in active concert or participation with it from engaging in

any employment practice which discriminates on the basis of race, national origin, opposition to unlawful employment practices, or the filing of charges under Title VII.

B. Grant a permanent injunction enjoining Defendant Kalabi Realty Co., its partners, officers, successors, assigns, and all persons in active concert or participation with it from engaging in any employment practice which discriminates on the basis of race, national origin, opposition to unlawful employment practices, or the filing of charges under Title VII.

C. Order Defendant Newmark to change its policies, practices, and programs to provide equal employment opportunities for Roy Lindsay, Carlos Rodriguez and other Black and Hispanic employees and employees who file charges under Title VII or oppose practices made unlawful under Title VII, and to eradicate the effects of their past and present unlawful employment practices.

D. Order Defendant Kalabi to change its policies, practices, and programs to provide equal employment opportunities for Roy Lindsay, Carlos Rodriguez and other Black and Hispanic employees and employees who file charges under Title VII or oppose practices made unlawful under Title VII, and to eradicate the effects of their past and present unlawful employment practices.

E. Order Defendant Newmark to make whole Roy Lindsay by providing appropriate backpay with prejudgment interest, in amounts to be proved at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices,

including but not limited to rightful place reinstatement of Roy Lindsay.

F. Order Defendant Kalabi to make whole Roy Lindsay by providing appropriate backpay with prejudgment interest, in amounts to be proved at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to rightful place reinstatement of Roy Lindsay.

G. Order Defendant Newmark to make whole Carlos Rodriguez by providing affirmative relief necessary to eradicate the effects of its unlawful employment practices.

H. Order Defendant Kalabi to make whole Carlos Rodriguez by providing affirmative relief necessary to eradicate the effects of its unlawful employment practices.

I. Order Defendant Newmark to make whole Roy Lindsay and Carlos Rodriguez by providing compensation for past and future nonpecuniary losses resulting from the unlawful employment practices described in paragraphs numbered 11, 12, 13, and 14 above, including emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life, in amounts to be determined at trial.

J. Order Defendant Kalabi to make whole Roy Lindsay and Carlos Rodriguez by providing compensation for past and future nonpecuniary losses resulting from the unlawful employment practices described in paragraphs numbered 15, 16, and 17 above, including emotional pain, suffering, inconvenience, mental anguish,



and loss of enjoyment of life, in amounts to be determined at trial.

K. Order Defendant Newmark to pay Roy Lindsay and Carlos Rodriguez punitive damages for its malicious and reckless conduct described in paragraphs numbered 11, 12, 13, and 14 above in amounts to be determined at trial.

L. Order Defendant Kalabi to pay Roy Lindsay and Carlos Rodriguez punitive damages for its malicious and reckless conduct described in paragraphs numbered 15, 16 and 17 above in amounts to be determined at trial.

M. Grant such further relief as the Court deems necessary and proper.

N. Award the Commission its costs in this action.

JURY TRIAL DEMAND

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

Respectfully submitted,

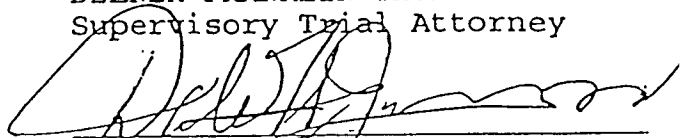
C. GREGORY STEWART  
General Counsel

ROSALIND D. GRAY  
Acting Deputy General Counsel

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
1801 L Street, N.W.  
Washington, D. C. 20507

JAMES L. LEE  
Regional Attorney

DELNER FRANKLIN-THOMAS  
Supervisory Trial Attorney



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DALE H. JURGENS (DJ 1638)  
Senior Trial Attorney  
Texas State Bar No. 11060000

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
New York District Office  
7 World Trade Center, 18th Floor  
New York, New York, 10048  
Telephone: (212) 748-8538  
Fax: (212) 748-8464