

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *eg* D.C.
03 SEP 30 AM 11:02
ROBERT R. DI TROLIO
CLERK, U.S. DIST. CT.
W.D. OF TN, MEMPHIS

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	CIVIL ACTION NO.
)	02-2730-DV
)	
v.)	
)	
THE POINTE AT KIRBY GATE, L.L.C.)	
)	
and)	
)	
SERVICEMASTER COMPANY,)	
)	
Defendants.)	

SETTLEMENT AGREEMENT

This lawsuit was instituted by the Equal Employment Opportunity Commission (hereinafter the "Commission") against the Defendants The Pointe at Kirby Gate, L.L.C., and ServiceMaster Company (hereinafter the "Defendants"), pursuant to Sections 706 (f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e *et seq.* and the Civil Rights Act of 1991, 42 U.S.C. §1981a, to remedy unlawful practices alleged in the Complaint, filed in this action, on September 19, 2002.

The Complaint alleged that Defendants, The Pointe at Kirby Gate, L.L.C., and the ServiceMaster Company ("Defendants"), subjected Otis Green and a class of African Americans to a hostile work environment, discriminated against them in the

This document entered on the docket sheet in compliance with Rule 58 and/or 79(a) FRCP on 10-1-03

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terms and conditions of employment, based on race, and retaliated against Mr. Green for opposing employment practices made illegal by Title VII.

The Defendants deny that they engaged in the unlawful employment practices alleged by the Commission and maintain that the actions of their officials were proper and lawful in all regards. This Settlement Agreement does not constitute an admission by the Defendants of the allegations of the Complaint. However, as all parties to this action desire to avoid the additional expense and delay in the litigation of this case, the Commission and the Defendants have agreed to settle all claims involved in this lawsuit.

In the event this proposed Settlement Agreement is not approved or does not become final, then it shall not be admissible in evidence in any subsequent proceeding in this action.

This Settlement Agreement constitutes the complete and exclusive agreement between the parties with respect to the matters referred to herein. No waiver, modification or amendment of any provision of this Settlement Agreement shall be effective unless made in writing. No representations or inducements to compromise this action have been made, other than those recited or referenced in this Settlement Agreement.

The court has reviewed the terms of the proposed Settlement Agreement in light of the applicable laws and regulations, the statements and representations of counsel for all parties, and hereby approves the Settlement Agreement.

It is hereby **ORDERED, ADJUDGED AND DECREED:**

I. JURISDICTION

The United States District Court for the Western District of Tennessee, Western Division, has jurisdiction over the parties and subject matter of this litigation.

II. SCOPE AND DURATION OF SETTLEMENT AGREEMENT

A. This Settlement Agreement resolves all issues and claims arising out of the Complaint of the Commission in this cause, alleging unlawful employment policies and practices maintained by Defendants and arising out of Charge No. 250-A2-0168 filed with the Commission by Otis Green. Notwithstanding any provisions contained in this Agreement, this Agreement shall not be considered in any manner to be dispositive of any other charges now pending before any office of the Commission, or any other lawsuits pending against Defendants or their parents or their parents' other subsidiaries, other than the above-mentioned charge and this lawsuit.

B. The provisions of this Settlement Agreement shall continue to be effective and binding upon the parties to this action for the time necessary for the parties to fulfill the obligations under this agreement.

III. NONDISCRIMINATION POLICY

Defendant, The Pointe at Kirby Gate, L.L.C. (and its successors in interest) agrees to extend its nonharassment policy to apply to conduct by residents.

IV. MONETARY RELIEF

Defendants will pay a total of \$75,000.00 in full settlement of the claims of Otis Green and the identified class members in accordance with instructions from the Commission concerning how much each person will be paid. The Commission will

notify the Defendants of the amount of monetary relief which will be paid to each class member within five days of the entry of the Agreement. Payment will then be made to Otis Green by payroll check for the back pay portion and by cashiers check for the remaining portion and the identified class by Defendants by cashiers checks within ten (10) days of notification by the Commission. Copies of the cashiers checks will be mailed at the same time to:

Faye Williams, Acting Regional Attorney
Equal Employment Opportunity Commission
1407 Union Avenue, Suite 621
Memphis, TN 38104

V. EXPUNGEMENT

The Defendant, The Pointe at Kirby Gate, L.L.C. (or its successor in interest), shall expunge any adverse comments from the personnel file of Otis Green regarding his employment with The Pointe at Kirby Gate, L.L.C.

VI. NOTICE

Defendant, The Pointe at Kirby Gate, L.L.C.(or its successor in interest), shall conspicuously post at its facility, the notice (poster) required to be posted pursuant to Title VII of the Civil Rights Act of 1964.

VII. TRAINING

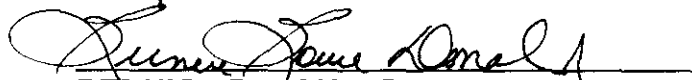
Defendant, The Pointe at Kirby Gate, L.L.C.(or its successors in interest), shall provide training in the workplace for its management staff on the issues of race discrimination, race harassment, race harassment by residents and compliance with Title VII of the Civil Rights Act of 1964. In addition, Defendant, The Pointe at Kirby Gate, L.L.C. (or its successor in interest) will notify the Commission within thirty days

after it completes the training and will provide a copy of the training materials and a list of the attendees at the training.

VIII. COSTS

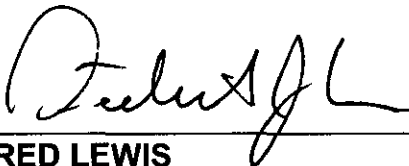
Each of the parties shall bear its own costs, including attorneys' fees.

IT IS SO ORDERED THIS 30th DAY OF September, 2003.

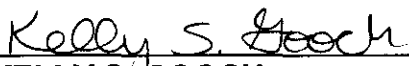


BERNICE B. DONALD
U. S. DISTRICT JUDGE

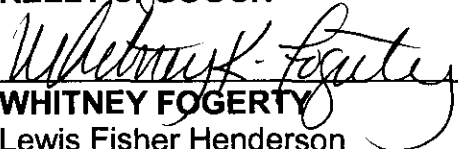
FOR DEFENDANTS:




FRED LEWIS



KELLY S. GOOCH



WHITNEY FOGERTY
Lewis Fisher Henderson
Claxton & Mulroy, LLP
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William N. Ozier by permission


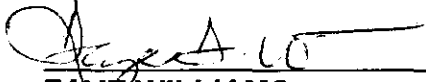
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(615) 742-6200

FOR THE COMMISSION:

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General Counsel


JAMES LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel



FAYE WILLIAMS

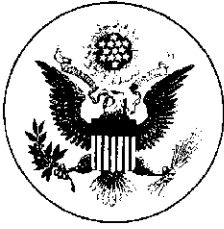
Acting Regional Attorney
TN Bar No. 11730



DEIDRE SMITH
Senior Trial Attorney,
TN Bar No. 018499

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION**

1407 Union Avenue, Suite 621
Memphis, Tennessee
(901) 544-0140



Notice of Distribution

This notice confirms a copy of the document docketed as number 34 in case 2:02-CV-02730 was distributed by fax, mail, or direct printing on October 1, 2003 to the parties listed.

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
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Diane Vescovo
OFFICE OF MAGISTRATE JUDGE DIANE K. VESCOVO
167 N. Main St., Room 341
Memphis, TN 38103

Honorable Bernice Donald
US DISTRICT COURT