

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

TEXAS DEPARTMENT OF FAMILY AND
PROTECTIVE SERVICES,

Defendant.

Civil Action No. 3:11-cv-364

Jury Trial Demanded

COMPLAINT

Plaintiff, United States of America, 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), 28 U.S.C. § 1331, and 28 U.S.C. § 1345.

3. Venue is proper in this judicial district under 42 U.S.C. § 2000e-5(f)(3) and 28 U.S.C. § 1391(b). Defendant Texas Department of Family and Protective Services (“DFPS”) is an agency of the State of Texas, which maintains places of business in this judicial district, and a substantial part of the events giving rise to this action took place in this judicial district.

4. DFPS 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. Michael Lewis (“Lewis”), who lives within this judicial district in Horizon City, Texas, filed a timely charge of discrimination based on race and/or sex on or about January 23, 2008 (Charge Number 453-2008-00481) against DFPS with the Equal Employment Opportunity Commission (“EEOC”).

6. Pursuant to Section 706 of Title VII, 42 U.S.C. § 2000e-5, the EEOC investigated the charge of discrimination filed by Lewis, found reasonable cause to believe DFPS violated Title VII with respect to Lewis, and unsuccessfully attempted to conciliate the charge. The EEOC subsequently referred the charge to the Department of Justice.

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

CLAIM FOR RELIEF

8. From October 2006 until July 2007, Lewis, an African-American male, was employed by DFPS as an investigator in the El Paso, Texas office of its Child Protective Services Division. Lewis had previously served six years in the U.S. Army as a Captain and Platoon Leader, including one year of combat in Operation Iraq Freedom. He was awarded the Bronze Star for leading a rescue mission to locate two comrades later found killed.

9. Lewis was hired by DFPS on or about October 2, 2006. After months of initial basic training, in February 2007, Lewis was assigned to investigate child abuse and neglect cases for the Division’s Investigations Unit. Lewis was the only black and the only male in the Investigations Unit.

10. During the entirety of his employment in the Investigations Unit, Lewis was subjected to race- and gender-based slurs and remarks on a routine basis by his first-line supervisor, Theresa Santaguida, and his second-line supervisor, Georgina Martinez, the second highest ranked official in the El Paso office. Martinez was Director of the Investigations

Program, and, as such, supervised Santaguida's Investigations Unit as well as several other Division units. Both Santaguida and Martinez are non-black females.

11. For example, Santaguida and Martinez regularly used the racially and gender charged term for an adult black male, "boy," in referring to Lewis at work and rarely referred to him by his name. Santaguida and Martinez also often made slave-related comments to Lewis, threatening to get out "the whip" on Lewis if he did not perform his work to their satisfaction. During one conversation with Lewis, Santaguida warned him that she was known as a "slave driver."

12. In February 2007, shortly after the racial comments from his supervisors began, Lewis told Santaguida that he was very offended by the constant "boy" and slave-related references and asked her to stop the objectionable language. However, his request was ignored and Lewis's supervisors continued to make offensive comments to him.

13. Workplace hostility was even reflected by Santaguida in her supervisory remarks to Lewis, which injected racially derogatory commentary about black people in general. For example, when critiquing a written case narrative received from Lewis, Santaguida asked him, "Where did *you people* learn how to write?" Santaguida then added, "It must be a cultural thing. That's why I don't like working with *you people*."

14. The harassment of Lewis by his supervisors went beyond comments and extended to objectionable workplace conduct towards Lewis based on his race and/or sex. For example, Santaguida and Martinez failed to take prompt and effective remedial action when Lewis complained that a client, i.e., mother in a child abuse and neglect case assigned to him on May 17, 2007, was sexually harassing him in the workplace.

15. During the relevant time period, DFPS's practice was that, when non-black female DFPS investigators complained to management about the inappropriate conduct of their DFPS clients, including harassment, the investigators' supervisors either reassigned the cases to others, or assumed responsibility for the cases themselves. However, Santaguida and Martinez ignored and even ridiculed Lewis's repeated complaints about the client's inappropriate behavior. For instance, on one occasion, Martinez responded to Lewis's request to be taken off the client's case: "Go Tiger. You're a big boy. Don't be afraid of her."

16. Workplace hostility towards Lewis was further demonstrated by Santaguida's requirement that Lewis check-in with her personally every day when he arrived at or left the office, including at lunch breaks. By contrast, Santaguida did not subject Lewis's non-black female coworkers in the unit to that strict check-in requirement.

17. On July 25, 2007, the campaign of harassment waged by Santaguida and Martinez against Lewis culminated in his termination. DFPS's stated reasons for the termination are not credible. Prior to his termination, Lewis had a record of satisfactory work performance at DFPS and had never received any disciplinary action of any kind.

18. DFPS has subjected Lewis to discrimination on the basis of his race and/or sex in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), among other ways, by:

- (a) creating and/or maintaining a hostile work environment that adversely affected the terms, conditions, and privileges of Lewis's employment;
- (b) terminating Lewis's employment on July 25, 2007; and
- (c) failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment.

PRAYER FOR RELIEF

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

- (a) enjoin DFPS from subjecting employees and applicants for employment to discrimination based on race and/or sex;
- (b) order DFPS to make Lewis whole for the loss he suffered as a result of the discriminatory conduct as alleged in this Complaint;
- (c) award compensatory damages to Lewis to fully compensate him for the pain and suffering caused by DFPS's discriminatory conduct as alleged in this Complaint, pursuant to and within the statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a;
- (d) order DFPS to take remedial steps to ensure a non-discriminatory and workplace for all its employees and officials, including but not limited to adopting appropriate policies and providing adequate training to all employees and officials responsible for making determinations regarding complaints of discrimination; and
- (e) award such additional relief as justice may require, together with the United States' costs and disbursements in this action.

JURY DEMAND

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.

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