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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT**

UNITED STATES OF AMERICA, *ex rel.*)
THERESA HILL,)
)
Plaintiff,)
)
-v-)
)
CITY OF CHICAGO,)
)
Defendant.)

Filed Under Seal

08CV4540
JUDGE HOLDERMAN
MAGISTRATE JUDGE NOLAN

COMPLAINT

Introduction

1. As a prerequisite to contracting with and/or receiving grant money from the federal government recipients must comply with certain laws and regulations regarding equal opportunity and affirmative action policies. "Recipients" include any "State or local government or agency thereof" to which federal financial assistance is extended. *See, e.g.,* 28 CFR 42.302(a). Accordingly, the City of Chicago and its agents, agencies, and departments fall under federal equal opportunity and affirmative action requirements to the extent they receive federal funding.

2. Equal employment opportunity requirements and affirmative action policies and guidelines for government contractual legal obligations are spread throughout the federal laws and regulations. For instance, 41 C.F.R. § 60-2.1 (2008), applies to public supply and service contractors. It provides that any such contractor with 50 or more employees and a \$50,000 contract must comply with affirmative action programs, standards and procedures in order to contract with the federal government.

Under 41 C.F.R. 60-1.20(e) (2008), any such contractor must develop and implement a written affirmative action plan for each of its establishments.

3. In or about 1995, in an effort to, among other things, meet the requirements to secure federal funding in the form of grants and other financial assistance for City services and program contracts with the federal government, the City of Chicago created its "Equal Employment Opportunity/Affirmative Action Plan" (the "Plan"), in its current form dated for the time period spanning 2005-2009. The Plan purports to promote equal employment opportunities among minorities and women in the Chicago workplace, and to ameliorate the underutilization of women and minorities throughout the City of Chicago workforce to the extent it reflects past or present discrimination.

4. The Equal Employment Opportunity/Affirmative Action Plan designates the Commissioner of the Department of Human Resources as the person responsible for the implementation of the program, and to act as the Chair of the Equal Employment Opportunity/Affirmative Action Council (the "Council"). It is the job of the Council, acting on behalf of the Department of Human Resources, to implement and monitor the operation of the Plan.

5. Other elements of the Plan call for the Department of Human Resources to:

- a) Develop plans and procedures and remove unjustifiable or discriminatory barriers to the employment and promotion of minorities and women;
- b) Create internal and external communication and dissemination programs to promote affirmative employment opportunities for minorities;
- c) Analyze hiring and promotion patterns;

d) Monitor the utilization of minorities and women in an effort to identify underutilization that may reflect discrimination among protected groups;

e) Assist departments in the development and adherence to individual department affirmative action programs, advise City employees of the role of the affirmative division, and ensure that the City of Chicago is in compliance with federal regulations and guidelines;

among other things.

6. For its part, the Council is to serve the Commissioner of the Department of Human Resources in an advisory capacity, and to review aspects of equal opportunity policies, goals, and directives. The Council is to include representatives from the Department of Human Resources, the Executive Director of the Commission on Human Relations, the Mayor's Office for People with Disabilities, and the Department of Law.

7. Despite the Plan requirements, which had been designed at least in part to meet federal regulations and requirements, and which were required in order for the City and its agencies to contract with and obtain grants from the federal government, the Plan exists in name only, *i.e.*, the Plan has never been operative in its most material elements. For instance:

a) The City of Chicago did *not* develop plans and procedures to remove unjustifiable or discriminatory barriers to the employment and promotion of minorities and women;

b) The City of Chicago did *not* create internal and external communication and dissemination programs to promote affirmative employment opportunities for minorities;

c) The City of Chicago did *not* analyze hiring and promotion patterns;

d) The City of Chicago did *not* monitor the utilization of minorities and women in an effort to identify underutilization that may reflect discrimination among protected groups;

e) The City of Chicago did *not* assist departments in the development and adherence to individual department affirmative action programs, or advise City employees of the role of the affirmative division, and ensure that the City of Chicago was in compliance with federal regulations and guidelines;

among other things.

8. In fact, despite the Plan requirements, which had been designed at least in part to meet federal regulations and requirements, and which was required in order for the City and its agencies to contract with and obtain grants other such financial assistance from the federal government, the City, under its current administration, did not create a Council to implement and monitor the operation of the Plan and to review aspects of equal opportunity policies, goals, and directives. The Plan is defunct on its face.

Parties

9. In or about October 2006, THERESA HILL ("Relator") began working as an Assistant Commissioner in the Workplace Compliance Unit for the City of Chicago's Department of Human Resources. She was given an office at the DePaul Center in downtown Chicago. Relator's immediate supervisor was Mark Devane ("Devane"). Devane had the title Deputy Commissioner, Workplace and Legal Compliance. Supervising both Relator and Devane, and others, was the Commissioner for the City of Chicago Department of Human Resources, Jacqueline King ("Commissioner King").

10. The Defendant, THE CITY OF CHICAGO, is a municipal corporation. The Department of Human Resources is a department of the City of Chicago.

Allegations

11. From on or about 2005 through 2008, Devane had responsibility to certify that the City of Chicago had an equal opportunity policy and affirmative action program

that complied with federal requirements, whenever there was a grant or contract with the federal government.

12. It is Relator's information and belief that Devane, and possibly others, routinely and regularly and on behalf of the City of Chicago and its agencies, certified on federal grants and contracts that the City of Chicago had a compliant equal employment opportunity program and affirmative action policies, when in fact it was well known within the City that no programs were actually in place. There was a Plan, but the Plan existed in name only and did not function as described.

13. The certifications signed by Devane (and others) stated in substance that the City of Chicago " has formulated an Equal Employment Opportunity Plan in accordance with [federal regulations], that was signed into effect within the past two years by the proper authority and is available for review." The City well knew at the time that while there was a "plan," the plan existed in name only and was not effective or operating on any material level. The absence of a functioning plan worked a fraud upon the federal government by leading federal grantors and contracting agencies to believe that the City of Chicago had a functioning plan, when in fact no such plan existed. Without such a plan, the City of Chicago and its agencies were not entitled to federal funds on contracts with 50 or more employees and worth over \$50,000.

14. It was shortly after she came to work for the Department of Human Resources, in October 2006, that Relator discovered that the City's equal employment opportunity and affirmative action programs existed on paper only. Relator expressed concerns to Commissioner King about the fact that the City of Chicago did not have a functioning equal employment opportunity and affirmative action plan. Commissioner King acknowledged that the plan on paper did not actually function. On information

and belief, in late 2006 or early 2007, Commissioner King brought their joint concerns to Brian Murphy, who worked in the capacity of First Deputy Chief of Staff to the Mayor, Richard Daley, at that date and time.

15. On information and belief, Murphy told Commissioner King that it was an election year and that Relator was making too much noise. Relator was thereafter relocated from her existing office at the DePaul Center to a different office at City Hall, and assigned to work on special projects and Shakman compliance issues.

16. In early 2007, however, Devane was removed from his position for unrelated reasons. As a result, Relator was returned to the DePaul Center and became the person responsible to sign the equal employment opportunity and affirmative action certifications.

17. Back at the DePaul Center, several proposed grants were forwarded for Relator's signature. She refused to sign off on them. For instance, in or about June 2007, Relator was contacted by officials from the Chicago Police Department. The Chicago Police Department was seeking Grant Number 403703 from the federal government in the amount of \$105,113. Relator was asked to sign a certification that the City of Chicago was in compliance with 28 C.F.R. § 42.301 *et seq.*, subpart E, certifying that the City of Chicago had formulated an equal employment opportunity plan. The request had been sent to Devane who forwarded it to the Relator.

18. Relator refused to sign the certification because she knew that the City of Chicago did not have an active equal opportunity plan or program, but just one that existed in name only.

19. Commissioner King called for a meeting with City of Chicago officials. Attending the meeting, among others, was Amy Kovalen, the head of Legal Compliance

for the Law Department for the City of Chicago. During this meeting the Compliance Unit agreed and stated that it could not recommend signing the certification based on the absence of a functional Affirmative Action/Equal Opportunity Employment plan.

20. In her position with the Department of Human Resources, Relator was asked on at least two other occasions to sign off on a certification that the City of Chicago had an effective affirmative action plan. On each occasion Relator refused to sign.

21. However, in the course of her employment Relator learned that Devane and others had been routinely signing certifications of compliance in order for the City of Chicago to qualify for federal grants, knowing that the certifications were false and that therefore the City was not entitled to collect the federal funds.

22. In addition, delegates of the City of Chicago were instructed to fill out government forms stating that the City of Chicago had not received any complaints or charges of equal employment type discrimination charges in an effort to avoid having the City of Chicago's non-implemented Plan exposed and investigated by federal compliance agencies such as the Office of Federal Contracts and Compliance ("OFCCP"). It was reported to the Relator that delegates performed said tasks without question, despite knowing that the City received a magnitude of equal employment opportunity complaints, both internally and externally.

23. Relator is the original source of these allegations, and has independent knowledge that said false statements took place pursuant to 31 U.S.C. § 3730(e)(4)(B), and therefore caused false documents to be sent to the federal government in order to collect federal funds.

24. In 2008, a federal jury found the City of Chicago's delegated patronage chief, Robert Sorich, guilty of orchestrating unlawful hiring protocols and practices through the City of Chicago's Department of Human Resources and other agencies, in an effort to gain and maintain political leverage and control of "clouted" members of the City of Chicago's Democratic "machine." Testimony from a multitude of Chicago managers detailed, recorded, and revealed that the City of Chicago based its overall hiring decisions on political affiliation and favoritism. Applicants without political clout were systematically and routinely passed over for City employment, promotion and other benefits they were legally entitled to under federal, state and municipal law because they lacked "clout." The City and its managers forged hiring documents and staged mock interviews and advertisements for job opportunities, in an effort to deceive the federal government in order to receive federal funding and circumvent mandated Shakman hiring compliance, which in and of itself promotes and supports federally mandated equal opportunity and affirmative action initiatives.

25. The City of Chicago's deceptive practices is a direct violation of federal contractor provisions and guidelines that the City of Chicago is bound to as a federal contractor and subcontractor of the federal government, state, and other federally funded entities. It also serves as a clear and paramount indication that the City of Chicago intentionally and unlawfully applied for and received federal funding for over a 20 year period for equal employment opportunity/affirmative action programs that were non-existent.

COUNT I (False Claims Act)

26. Relator realleges paragraphs one through 22 as though fully set forth herein.

27. The False Claims Act, 31 U.S.C. § 3729, states in relevant part:

(a) Liability for certain acts. Any person who -

(1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government ... a false or fraudulent claim for payment or approval; is liable to the United States Government for a civil penalty of not less than \$5000 and not more than \$10,000 plus three times the amount of damages which the Government sustains because of the act of that person ...

(B) "Knowing" and "knowingly" defined. For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information

(1) has knowledge of the information;

(2) acts in deliberate disregard of the truth of the information, and no proof of specific intent to defraud is required.

(c) Claim defined. For purposes of this section, "claim" includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, or grantee, or other recipient for any portion of the money or property which is requested or demanded.

28. From at least early 1990 to the present, agents for the City of Chicago certified to the United States Government on grants and other federally received funding programs that the City of Chicago had an operating affirmative action and equal employment opportunity program, when in fact no such program actually existed. These false certifications were made in order to obtain grant money from the federal government to which the City of Chicago was not entitled, because it did not have existing affirmative action and equal employment opportunity programs.

29. As a result of these false certifications the United States Government made payments to the City of Chicago and its various departments and agencies in excess of one million dollars (\$1,000,000).

30. Relator is a private person with direct and independent knowledge of the allegations in this Complaint, which is brought on behalf of herself and the United States.

31. Plaintiff demands trial by jury.

CONCLUSION

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Award damages to the United States Government in the amount of grant money and other federally funded financial assistance and services either rendered directly or indirectly to the City of Chicago and its departments and agencies from the mid-1990's to the present;

B. Award treble damages to the United States as provided in 31 U.S.C. § 3729(a);

C. Award Relator Hill an amount equal to at least 25% and not more than 30% of the recovery of the United States as provided by 31 U.S.C. § 3730(d)(2);

D. Award Relator Hill her attorney's fees and costs in this litigation as provided by 31 U.S.C. § 3730(d)(2); and,

E. Award such other relief that the Court deems just.

Respectfully submitted,
THERESA HILL

By:


One of her attorneys

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