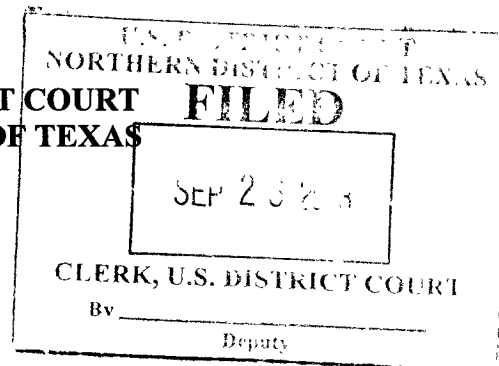


EMI
ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



RAYMOND HALL,

Plaintiff,

v.

PITNEY BOWES INC.,

Defendant.

§
§
§
§
§
§
§
§
§
§

CASE NO. 3:02-CV-2756-BH

**DEFENDANT'S BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Defendant Pitney Bowes Inc. ("Defendant") respectfully files this Brief in Support of Motion for Summary Judgment, pursuant to Federal Rule of Civil Procedure 56, as to all claims and issues asserted herein.

SUMMARY

In accordance with Local Rule 56.3, Defendant sets forth the following:

Plaintiff sues herein for race discrimination and, possibly, for retaliation.¹ See Plaintiff's Original Complaint, Exhibit "A," pages 1-5. The elements of a race discrimination claim are well established:

In the absence of direct proof of discrimination, the plaintiff in [a] discrimination case must follow the three-step burden-shifting framework laid out in *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973), and *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 101 S. Ct. 1089 (1981). The plaintiff first must establish a *prima facie* case of discrimination. The burden then shifts to the employer to articulate a legitimate, nondiscriminatory reason for its action. If the employer does so, the plaintiff then bears the burden of proving that the articulated reason is untrue and was given as a pretext for discrimination. *Davis v. Chevron U.S.A., Inc.*, 14 F.3d 1082, 1087 (5th Cir. 1994). "[An

¹ Plaintiff's only reference to a retaliation claim is boilerplate language in paragraph 5.12 of Plaintiff's Original Complaint. The claim is unsupported by any factual allegations and Plaintiff testified at deposition that he has not been retaliated against. See Plaintiff's deposition excerpts, Exhibit "C," page 10.

**DEFENDANT'S BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

employer's] reason cannot be proved to be a 'pretext for discrimination' unless it is shown both that the reason was false and that discrimination was the real reason." *St. Mary's Honor Ctr. v. Hicks*, 113 S. Ct. 2742, 2752 (1993).

EEOC v. Louisiana Office of Community Svcs., 47 F.3d 1438, 1443 (5th Cir. 1995). Here, Defendant's summary judgment evidence establishes the legitimate nondiscriminatory reasons as to why Plaintiff did not receive the promotion of which he complains. Specifically, a more qualified and better-suited candidate was selected. Further, Plaintiff cannot establish that Defendant's reasons were a pretext; specifically, Plaintiff cannot show that as the losing candidate for the promotion of which he complains that he had superior qualifications such that they "leap from the record and cry out to all who would listen that he was vastly - or even clearly - more qualified for the subject job." *Price v. Federal Express Corp.*, 283 F.3d 715, 723 (5th Cir. 2002)(affirming the granting of summary judgment), *see* Exhibit "H," pages 30-39, 37.

A *prima facie* case of retaliation requires that the plaintiff show: (1) he engaged in activity protected under Title VII, (2) an adverse employment action occurred, and (3) there was a causal connection between the protected activity and the adverse employment decision. *Herrod v. American Airlines, Inc.*, 132 F.3d 1112 n.8 (5th Cir. 1998). The Plaintiff admits that he was not retaliated against.

SUMMARY JUDGMENT EVIDENCE²

Defendant's Summary Judgment Motion is based on the following evidentiary support:

- 1) Plaintiff's Original Complaint, Exhibit "A," page 1-5;

² In accordance with LR56.6, all exhibits are contained in an appendix filed herein and all exhibits, in addition to letter designations, are numbered sequentially. All page references are to the sequential numbering required by LR56.6(b)(3).

- 2) Plaintiff's EEOC Charge of Discrimination, hereinafter "Plaintiff's EEOC Charge," Exhibit "B," page 6;
- 3) Excerpts from the deposition of Plaintiff Raymond Hall, Exhibit "C," pages 7-10, and authenticated by the Affidavit of Bobby G. Pryor, Exhibit "D," page 11;
- 4) Affidavit of Bobby G. Pryor, Exhibit "D," page 11;
- 5) Affidavit of Richard Jozwiakowski and the resumes of La'Manza Davis, Kevin Karsh, Mark Griggs and Raymond Hall attached thereto, Exhibit "E," pages 12-25;
- 6) Affidavit of Leonard Jones, Exhibit "F," pages 26-27;
- 7) Affidavit of Sandra Long, Exhibit "G," pages 28-29; and
- 8) For the Court's convenience, a copy of the opinion in *Price v. Federal Express Corp.*, 283 F.3d 715 (5th Cir. 2002).

UNDISPUTED FACTS

1. In July 2001, Plaintiff was employed as a District Manager with Pitney Bowes Inc. and interviewed for a Regional Manager position in Phoenix (the "Phoenix position"). Exhibit "A," pages 2-3.
2. Plaintiff's EEOC Charge complains of his purported failure to receive the Phoenix position. Exhibit "B," page 6. Specifically, Plaintiff's complaint is based on his subjective "belief" alleging that he "was qualified for the position and had the same or more experience than the applicant who was selected for the position." Exhibit "A," page 3, paragraph 5.10; Exhibit "B," page 6.
3. At deposition, Plaintiff admitted that "From what I understand, the other applicants that applied were equal to or had the same experience as me" Exhibit "C," page 7.

DEFENDANT'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

4. Further, Plaintiff testified that "No, I do not have evidence that anyone did not select me based on race." Exhibit "C," page 10.

5. An advisory committee of Pitney Bowes Inc.'s employees interviewed potential candidates for the Phoenix position. The top four candidates to be interviewed were selected from dozens of applicants. The top four candidates were La'Manza Davis, Kevin Karsh, Mark Griggs and Raymond Hall. The committee members independently interviewed the candidates and each member that interviewed the Plaintiff rated him as the weakest of the four candidates. Exhibit "E," pages 12-14; Exhibit "F," pages 26-27, Exhibit "G," pages 28-29.

6. Advisory committee member Leonard Jones, an African American, concluded after interviewing three of the four candidates, including Raymond Hall, that Mr. Hall was the weakest candidate. Mr. Hall failed to provide examples of ongoing direct customer involvement or innovations in meeting customer needs that Mr. Leonard believed were necessary for the position. The other candidates he interviewed effectively communicated their experience in meeting customer needs and the innovations they employed in dealing with customers. He reached these conclusions independently and before discussing the matter with other committee members. Finally, it is part of Mr. Leonard's job as the Vice President of Human Resources Document Messaging Technologies for Pitney Bowes Inc. to promote diversity within the company. If Mr. Hall had been the best candidate, he would certainly have recommended him for the position. Exhibit "F," pages 26-27.

7. Advisory committee member Sandra Long, a female, concluded after interviewing the four candidates that Mr. Hall was the weakest candidate. During the

**DEFENDANT'S BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

interview process, she was looking for a candidate with a genuine enthusiasm for customer service and satisfaction, which she believed necessary for the position. During his interview, Mr. Hall failed to provide examples of innovations in meeting customer needs. On the other hand, candidates La'Manza Davis and Mark Griggs provided numerous examples of their customer involvement and innovations with customers. In addition, Mr. Davis and Mr. Griggs displayed an enthusiasm for the position and for dealing with customers in general, which Mr. Hall did not demonstrate during the interview. Ms. Long reached these conclusions independently and before discussing the matter with other committee members. Exhibit "G," pages 28-29.

8. The advisory committee members recommended to Richard Jozwiakowski that Mr. Hall not be selected for the position. Race was not a factor in the recommendations of the advisory committee members. Exhibits "F," page 27; "G," page 29.

9. Mr. Jozwiakowski, the person making the hiring decision for the Phoenix position interviewed each of the four candidates and agreed with the advisory committee members that Mr. Hall was the weakest of the four candidates. Mr. Hall failed to provide, in response to questions, examples of where he had established relationships with key customer accounts. Kevin Karsh, Mark Griggs and La'Manza Davis, on the other hand, in addition to resumes, which reflected their hands on experience with customers, provided such examples. Additional reasons that these three candidates were more viable candidates than Mr. Hall for this position include:

Kevin Karsh: Western Division Manager of the Year, developed the Management Training Seminar for 2000, developed a quarterly presentation for DMT's largest customers that is being used nationally,

**DEFENDANT'S BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

introduced the book "Raving Fans" that is being used throughout DMT for customer satisfaction

Mark Griggs: provided customer service support for all Mail Finishing, Mail Creation and TransScape customers as well as non-focused Office Systems and Document Messaging Technology customers

La'Manza Davis: at Danka Office Imaging Company was accountable for profitable management of field service organization managing over 220 employees, his area of responsibility included six western states and over 17,000 customers, was responsible for managing the P&L in excess of \$2,000,000 monthly and reduced expenses by over \$600,000 and increased gross profits percentage from 39 percent to 49 percent, his performance was rewarded the Gold Medal for service excellence in 1998 and 2000, as National Service Manager for Alphagraphics Corporation influenced a turnaround in business from \$0 to \$6,000,000 in 2001, and was the only service representative invited to the Alphagraphics Gold Circle 2001 award in Telluride

Neither Mr. Hall nor his resume reflected the level of customer involvement and achievement as reflected by the other three candidates. Exhibit "E," pages 13, 15-25.

10. Mr. Jozwiakowski ultimately selected La'Manza Davis for the position although he considered Mr. Karsh a very strong candidate. Determining factors between these two candidates, Davis and Karsh, was Mr. Davis' management of 220 employees and other managers and the turnaround of a customer of Danka, Alphagraphics, from a \$0 account to a \$6,000,000 account and being selected by Alphagraphics as the only outside account representative to attend their gold circle award trip to Telluride. Exhibit "E," pages 13-14, 20-22.

11. Race was not a factor in Mr. Jozwiakowski's decision to hire La'Manza Davis for the position. In fact, while Mr. Jozwiakowski selected Mr. Davis because he believed Mr. Davis to be the best candidate, he also believed he was hiring a minority for the position. By appearance, Mr. Jozwiakowski concluded that Mr. Davis was a minority

**DEFENDANT'S BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

and during the interview or subsequent to the interview was informed by Mr. Davis that he was an American Indian. Exhibit "E," page 14.

12. Plaintiff testified that Pitney Bowes Inc. has not retaliated against him. Exhibit "C," page 10 ("Q: Has there been any retaliation against you? A: None that I know of.").

ARGUMENT AND AUTHORITIES

A. Criteria for Summary Judgment

Under Rule 56(c), summary judgment should be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Several Supreme Court decisions have clarified the standard of determining whether parties have raised a genuine issue of fact. *See, e.g., Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 2552-055 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 2510-12 (1986); *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348, 1356-57 (1986). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue of trial.'"

Matsushita, 106 S. Ct. at 1356 (quoting *First Nat'l Bank of Arizona v. Cities Service Co.*, 391 U.S. 253, 289, 88 S. Ct. 1575, 1592 (1968)); *see Leonard v. Dixie Well Service & Supply, Inc.*, 828 F.2d 291, 295 (5th Cir. 1987).

Furthermore, once the moving party makes the initial showing, negating any disputed, material fact, the party opposed to the motion must offer evidence reflecting the existence of one or more genuine issues of fact. *Honore v. Douglas*, 833 F.2d 565, 567

DEFENDANT'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

(5th Cir. 1987). A party opposing a properly supported motion under Rule 56 "must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); *Anderson*, 106 S. Ct. at 2510.

B. Race Discrimination

Pitney Bowes Inc.'s undisputed facts, set forth above, establish the legitimate, nondiscriminatory reasons as to why Plaintiff was not selected for the Phoenix position; simply that Plaintiff was not as qualified for this particular position as the other candidates and, in fact, was rated as the weakest of the final four candidates. Even Plaintiff admits in his deposition that the other candidates for the position were, at least, as qualified for the position as he:

Deposition testimony: "From what I understand, the other applicants that applied were equal to or had the same experience as me" Exhibit "C," page 7.

The 5th Circuit held that to support such a claim the losing candidate must show that he has superior qualifications such that they **"leap from the record and cry out to all who would listen that he was vastly - or even clearly - more qualified for the subject job."** *Price v. Federal Express Corp.*, 283 F.3d 715, 723 (5th Cir. 2002). The affidavits of the advisory committee members and Mr. Jozwiakowski establish legitimate reasons as to why they concluded Mr. Hall was not the most qualified candidate. Even Plaintiff testified that the other candidates for the position were as qualified as he was for the position. Such evidence supports summary judgment since it precludes a conclusion that Mr. Hall was vastly more qualified than the other candidates.

C. Retaliation

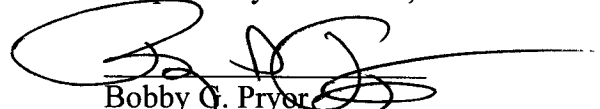
Plaintiff's EEOC Charge under the category "cause of discrimination based on" checked only "Race" and did not also check "Retaliation." Exhibit "B," page 6. Further, at deposition, Plaintiff acknowledged there has been no retaliation:

Q: Has there been any retaliation against you?
A: None that I know of.

Exhibit "C," page 10.

Wherefore, premises considered, Defendant prays that its Motion for Summary Judgment be granted in all respects, denying all claims of Plaintiff, that judgment be entered in Defendants favor for all taxable costs of court and that it be awarded such other and further relief to which it is justly entitled.

Respectfully Submitted,


Bobby G. Pryor
State Bar No. 16373720

Pryor & Bruce
302 N. San Jacinto
Rockwall, Texas 75087
Telephone: (972) 771-3933
Facsimile: (972) 771-8343

Attorneys for Defendant

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served upon counsel for Plaintiff, Gregg Rosenberg, 11 Greenway Plaza, Suite 2810, Houston, Texas 77046, via United States certified mail on the 25th day of September, 2003.



**DEFENDANT'S BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**