

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, et al.,	:	CIVIL ACTION
Plaintiffs,	:	
MICHAEL KIRBY, et al.,	:	
Plaintiffs-Interveners,	:	CLASS ACTION
vs.	:	
JOSEPH RIZZO, et al.,	:	No. 2:74-cv-00258
Defendants.	:	

**FILED**

OCT 27 2011

MICHAEL J. HENRICKS, Clerk  
U.S. District Court

**ORDER**

AND NOW, this 27<sup>th</sup> day of Dec., 2010, upon consideration of plaintiff-intervener's Motion to Dissolve the Consent Decree under Federal Rule of Civil Procedure 60(b)(5), and the responses thereto, the Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. The City of Philadelphia is a City of the First Class that operates a municipal fire department.
2. The City of Philadelphia Fire Department's mission is to extinguish fires, administer and enforce laws, statutes, or ordinances related to fire and explosion hazards, train firefighters, and operate fire prevention programs and a fire security system. Phila. Home Rule Charter § 5-400.
3. On or about January 31, 1974, the Commonwealth of Pennsylvania, Club Valiants, Inc., Ronald C. Lewis, Charles G. Hendricks, Robert E. Dobson, Stephen Kerrin, and Joseph L. Sawyer (collectively, the "plaintiffs"), filed a class-action lawsuit

against the City of Philadelphia and various individuals in their official capacity, in which they alleged that the Philadelphia Fire Department (the “department”) discriminated against African-Americans in both entry-level hiring and promotional decisions, in violation of Title VII, 42 U.S.C. § 2000 *et seq.*, and the Equal Protection Clause.

4. On January 7, 1975, the Court entered a consent decree (the “decree”), imposing certain obligations on the department, including the creation of new entry and promotional exams and mandatory promotion of certain African-American firefighters.

5. The decree was subsequently modified by orders entered on October 27, 1977, July 24, 1984, March 19, 1993, August 27, 1997, and June 29, 1999.

6. The 1977 modification terminated the promotional quotas, approved exams for the positions of lieutenant and captain, and relinquished its supervision of, and jurisdiction over, the department’s promotional exams.

7. The 1984 modification imposed a two-part remedial hiring scheme on the department. First, the department was ordered to hire, in addition to those qualified black firefighter applicants who it would have otherwise hired on a rank order basis, an additional 151 qualified black applicants over the next 1,250 firefighter hires (the “quota”). Second, the order directed that any position on the eligibility list left open because the original applicant was hired pursuant to the quota was to be filled by “the next highest ranking black remaining on the list.”

8. The 1993 modification applied the remedial hiring scheme to all uniformed classes.

9. The 1999 modification indefinitely extended the remedial hiring scheme.

10. On November 5, 2009, plaintiff-intervenors Michael Kelly, Edward Anderson, and Robert Gallagher—white applicants who were not hired from the most recent eligibility list—filed a motion to dissolve the consent decree.

11. On February 4, 2010, the court dissolved the consent decree because plaintiff-intervenors' motion appeared unopposed.

12. On February 23, 2010, the Court vacated the February 4, 2011 order.

13. Club Valiants, Inc., maintained that it was never served with the motion for intervention or the motion to dissolve the consent decree.

14. On May 3, 2010, the Court directed the City to file a motion to dissolve the consent decree.

15. On or about May 19, 2010, Club Valiants, Inc. filed a motion to dismiss intervenors from the case for lack of standing or jurisdiction.

16. On May 19, 2010, the City filed a motion to dissolve the consent decree.

17. Prior to the Court's ruling upon Club Valiants, Inc.'s motion to dismiss intervenors or the motions to dissolve the consent decree, the parties agreed to attend settlement conference proceedings before the Hon. Judge Timothy Rice, U.S.M.J., and the Court has refrained from acting upon the motions pending the outcome of settlement discussions.

18. On or about September 21, 2011, the Commonwealth of Pennsylvania withdrew all claims against the defendants and was dismissed from this action upon stipulation of all parties.

19. After several settlement conferences and telephone calls with the Court, the parties reached a proposed settlement with respect to the issues raised in the instant litigation.

#### CONCLUSIONS OF LAW

1. The Court has authority, under Federal Rule of Civil Procedure 60(b)(5), to approve the terms of the attached settlement agreement.
2. After reviewing the settlement agreement's terms, the Court finds them to be fair, reasonable, and adequate.
3. Accordingly, the Court approves the attached settlement agreement, and this case will be placed into civil suspense pending the expiration of the "suspension period" as defined by the attached agreement, which is incorporated into this Order.

BY THE COURT:



Rice, M.J.

Date: October 27, 2011

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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Plaintiffs,	:	
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	:	
JOSEPH RIZZO, et al.,	:	No. 2:74-cv-00258
	:	
Defendants.	:	

**Settlement Agreement and Release**

**WHEREAS**, the City of Philadelphia is a City of the First Class that operates a municipal fire department;

**WHEREAS**, on or about January 31, 1974, the Commonwealth of Pennsylvania, Club Valiants, Inc., Ronald C. Lewis, Charles G. Hendricks, Robert E. Dobson, Stephen Kerrin, and Joseph L. Sawyer (collectively, the “plaintiffs”), filed a class-action lawsuit against the City of Philadelphia and various individuals in their official capacity, in which they alleged that the Philadelphia Fire Department (the “department”) discriminated against African-Americans in both entry-level hiring and promotional decisions, in violation of Title VII, 42 U.S.C. § 2000 *et seq.*, and the Equal Protection Clause;

**WHEREAS**, on January 7, 1975, the Court entered a consent decree (the “decree”), imposing certain obligations on the department, including the creation of new entry and promotional exams and mandatory promotion of certain African-American firefighters;

**WHEREAS**, the decree was subsequently modified by orders entered on October 27, 1977, July 24, 1984, March 19, 1993, August 27, 1997, and June 29, 1999;

**WHEREAS**, the 1977 modification terminated the promotional quotas, approved exams for the positions of lieutenant and captain, and relinquished its supervision of, and jurisdiction over, the department's promotional exams;

**WHEREAS**, the 1984 modification imposed a two-part remedial hiring scheme on the department. First, the department was ordered to hire, in addition to those qualified black firefighter applicants who it would have otherwise hired on a rank order basis, an additional 151 qualified black applicants over the next 1,250 firefighter hires (the "quota"). Second, the order directed that any position on the eligibility list left open because the original applicant was hired pursuant to the quota was to be filled by "the next highest ranking black remaining on the list";

**WHEREAS**, the 1993 modification applied the remedial hiring scheme to all uniformed classes;

**WHEREAS**, the 1999 modification indefinitely extended the remedial hiring scheme;

**WHEREAS**, on November 5, 2009, plaintiff-intervenors Michael Kelly, Edward Anderson, and Robert Gallagher—white applicants who were not hired from the most recent eligibility list—filed a motion to dissolve the consent decree;

**WHEREAS**, on February 4, 2010, the court dissolved the consent decree because plaintiff-intervenors' motion appeared unopposed;

**WHEREAS**, on February 23, 2010, the Court vacated the February 4, 2011 order;

**WHEREAS**, Club Valiants, Inc., maintained that it was never served with the motion for intervention or the motion to dissolve the consent decree;

**WHEREAS**, on May 3, 2010, the Court directed the City to file a motion to dissolve the consent decree;

**WHEREAS**, on or about May 19, 2010, Club Valiants, Inc. filed a motion to dismiss intervenors from the case for lack of standing or jurisdiction;

**WHEREAS**, on May 19, 2010, the City filed a motion to dissolve the consent decree;

**WHEREAS**, prior to the Court's ruling upon Club Valiants, Inc.'s motion to dismiss intervenors or the motions to dissolve the consent decree, the parties agreed to attend settlement conference proceedings before the Hon. Judge Timothy Rice, U.S.M.J., and the Court has refrained from acting upon the motions pending the outcome of settlement discussions;

**WHEREAS**, on or about September 21, 2011, the Commonwealth of Pennsylvania withdrew all claims against the defendants and was dismissed from this action upon stipulation of all parties;

**WHEREAS**, the parties wish to resolve this matter and avoid the expense and uncertainties of litigation;

**WHEREAS**, after several settlement conferences and telephone calls with Judge Rice, the parties reached a proposed settlement with respect to the issues raised in the instant litigation;

**NOW, THEREFORE**, the parties agree as follows:

1. Permanent recruitment team. The department will form a permanent recruitment team, consisting of three officers. Subject to the officer being able to meet standards set forth by the department, the Commissioner of the department will assign a Club Valiants, Inc.-nominated candidate to the first and second recruitment teams selected by the department. In the event any such nominated candidate does not qualify, the Valiants shall have one right to substitute a candidate. The assignment will last for two to three years, the duration of the assignment being at the discretion of the department's Commissioner. The City will, subject to emergency staffing needs, continue to staff the permanent recruitment team for a period of two hiring cycles or six years, whatever is less.<sup>1</sup>

2. Suspension of the consent decree. The parties agree to suspend the consent decree for a period of two (2) years (the "suspension period"), which period will begin to run on the date of establishment of the eligible list for firefighters (exam no. 6B01-20110627-OC-01).

- a. During the suspension period, the City will be free to develop and administer exams for entry-level uniformed personnel and hire from any eligibility lists that result from such exams without being bound by the restrictions of the consent decree, but must otherwise comply with law.

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<sup>1</sup> The parties agree that a "hiring cycle" begins on the date that the department establishes an eligible list of appointments to the department's uniformed personnel classes and continues through the expiration of the list. The parties understand and agree that the eligible list expires two years after its creation, pursuant to the Philadelphia Home Rule Charter.



- b. Within 14 days after the end of the suspension period, the department will produce to the Court the EEO-1 report (the "report") for all uniformed personnel.
- c. The parties will have 14 business days from the date the report is produced to the Court to conduct an *in camera* review of the report and the underlying data and to assert any challenges to the data contained in the report. This period may be extended by the Court for cause shown at the request of a party, at the Court's discretion.
- d. The Court will have final and unreviewable authority to decide any challenges to the data contained in the report. Any such challenge must be supported with clear and convincing evidence, and the party will pay the prevailing party's attorney fees if the Court finds that either the challenge or the defense to the challenge was frivolous or made in bad faith. It is agreed that the Court's decision on any such challenge shall constitute a final judgment, not subject to appeal. Any such challenges shall be limited to one of the following grounds:
  - i. that the City made a mathematical error in calculating the percentage of African-Americans in the uniformed personnel classes;
  - ii. that the City included individuals who are not on the department's payroll as of the date that the suspension period expires; or
  - iii. any other factor, provided that:

1. there is a presumption of correctness for any data that is provided as a result of an individual employee's self-report;
  2. any petition challenging the classification must contain, on its face, substantial evidence that the classification is wrong; and
  3. the Court—in its sole, final, and unreviewable discretion—will determine which, if any, petitions meet this standard and shall automatically dismiss any petitions that do not.
- e. The consent decree will permanently dissolve if, after the expiration of the suspension period and final determination by the Court of any challenges described in subparagraph 2(d), the representation of African-Americans in the department's combined uniformed personnel classes does not fall below 26.73% of the total number of employees in the combined uniformed personnel classes.
- f. If the representation of African-Americans in the department's uniformed personnel classes does fall below 26.73% of the total number of employees in the uniformed personnel classes, the consent decree shall not permanently dissolve and shall remain in force for purposes and all future hiring thereafter, subject to the right of any party to move for termination or modification of the decree. Further, all parties shall retain all rights, remedies, claims, and defenses that they have now, or may have in the

within 14 business days of complete execution of this agreement. The parties further agree that there are no class members who would be bound by the terms of the settlement agreement, and, thus, no notice is required as set forth in Federal Rule of Civil Procedure 23(e)(1). All parties agree to cooperate and provide reasonable assurances and to execute any joint documents or pleadings necessary to move the Court for approval of the terms of this agreement. In the event that the Court does not approve the settlement, the parties shall return to the positions they were in prior to execution of this agreement, and the litigation shall continue.

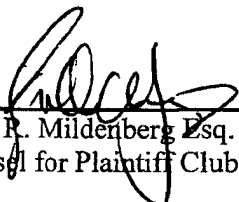
7. Non-precedential effect of agreement. This agreement is not intended in any way to set precedent or to prejudice the respective positions of the parties with respect to this matter or any other future disputes, grievances, or any legal matters.

8. Court's continuing jurisdiction. The Court will have continuing jurisdiction to enforce the settlement agreement while this case remains in civil suspense.

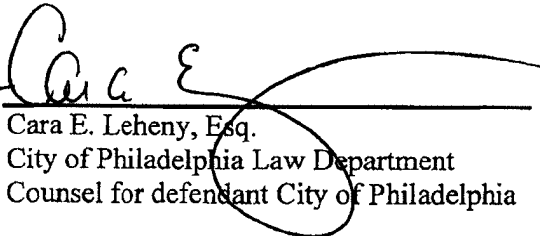
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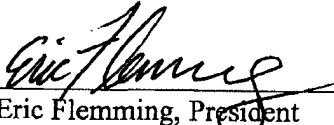
BY ENTERING INTO THIS AGREEMENT, ALL PARTIES HERETO  
ACKNOWLEDGE THAT THEY HAVE READ THE AGREEMENT, HAVE HAD  
THE OPPORTUNITY TO REVIEW ITS TERMS AND CONDITIONS WITH THEIR  
RESPECTIVE COUNSEL, UNDERSTAND SAID TERMS AND CONDITIONS, AND  
ENTER INTO THIS AGREEMENT VOLUNTARILY. INTENDING TO BE  
LEGALLY BOUND HEREBY, SIGNED AND AGREED TO BY COUNSEL ON THIS  
25<sup>TH</sup> DAY OF OCTOBER, 2011, ON BEHALF OF THEIR CLIENTS:

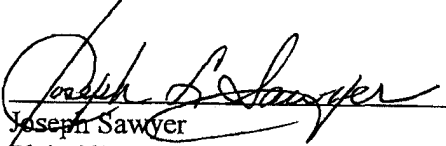
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