

April 25 – May 1 Summary Judgment Orders / Grace Starling

Summary Judgment Review

Case Name: *Cisero v. ADT LLC of Delaware*

Nature of the Order: Magistrate's Report & Recommendation

Magistrate Judge: Catherine M. Salinas

District Judge: Steven D. Grimberg

Claims & Outcomes:

1. Claim: Title VII Race Discrimination

Outcome: Recommend Summary Judgment be Granted

2. Claim: Section 1981 Race Discrimination

Outcome: Recommend Summary Judgment be Granted

3. Claim: Title VII Retaliation

Outcome: Recommend Summary Judgment be Granted

4. Claim: Section 1981 Retaliation

Outcome: Recommend Summary Judgment be Granted

Whether R&R Followed: N/A

For Race/Gender Discrimination Cases:

Race of Plaintiff: African American

Gender of Plaintiff: N/A

Summary:

Plaintiff, an African American woman, worked for Defendant ADT as a Commercial Security Consultant ("CSC"). During her employment, Plaintiff became concerned that her manager, a white man, was sabotaging her income potential by bringing in other CSCs on her projects at the last minute, which implicated ADT's policy of splitting commissions. Plaintiff felt that those commissions were owed to her. Plaintiff spoke with another CSC who was a white man who stated that his split commission projects were assigned that way from the outset rather than toward the end of the project work. Plaintiff then submitted a complaint to the ethics hotline and sent an email to report four situations over the prior sixty days where she believed her sales were either improperly taken away from her by her supervisor or unfairly split with another employee.

In Plaintiff's December 2017 ethics hotline complaint and email, Plaintiff did not complain of race discrimination or accuse her supervisor or anyone at ADT of race discrimination. Rather, Plaintiff's complaints were limited to the way her supervisor was allegedly taking sales away from Plaintiff and making her split sales commissions with other sales representatives without discussing it with Plaintiff first. In response to Plaintiff's ethics complaint, a HR representative met with Plaintiff in December 2017 and again in January 2018 in person and by telephone to

discuss Plaintiff's concerns. When the HR representative completed her investigation in early January 2018, she concluded that Plaintiff's concerns were unfounded. Following the investigation finding, in late January, Plaintiff sent an email to the HR representative complaining of more incidents that Plaintiff contended constituted interference with her sales efforts, in addition to the four she had complained about in December. On February 6, 2018, Plaintiff filed the first of three charges of discrimination with the Equal Employment Opportunity Commission ("EEOC"). Plaintiff told her supervisor and the HR representative that she either had filed or was planning to file an EEOC charge and would provide them with a copy. Plaintiff was terminated in April for job deficiencies.

In Plaintiff's complaint, Plaintiff asserted claims pursuant to Title VII and Section 1981, alleging that she was discriminated against on the basis of her race when ADT's Commercial Sales Manager interfered with her sales by: (1) reassigning her leads to non-African-American counterparts; (2) taking over or removing leads generated or managed by Plaintiff at the last minute; and/or (3) requiring her to split leads with other CSC, resulting in shared commissions. Judge Salinas concluded that Plaintiff failed to show that reassigning leads to non-African American colleagues, taking over or removing leads generated or managed by Plaintiff at the last minute, and/or requiring Plaintiff to split leads with other CSCs were adverse employment actions. Judge Salinas also found that Plaintiff could not show that she was treated less favorably than similarly-situated employees outside of her protected class because the actions taken by ADT were not shown to be a departure from ADT's normal sales practices or that the commission splits were done so unfairly or for a discriminatory reason. Judge Salinas separated Plaintiff's testimony from other evidence, stating that, aside from "her own subjective testimony," Plaintiff had no probative evidence that the method of reassigning leads had a serious and material effect on the terms and conditions of Plaintiff's employment. Judge Salinas also stated that Plaintiff failed the comparator requirement because she could not show that the written warning issued to Plaintiff was more severe than the actions enforced against other persons who engaged in similar conduct/misconduct. With respect to an argument that Plaintiff raised that she was the only African-American CSC in her office to report to her particular supervisor, Judge Salinas discounted the argument, calling Plaintiff's testimony "self-serving and conclusory."

With respect to Plaintiff's retaliation claims, Plaintiff claimed that ADT unlawfully retaliated against her (in violation of Title VII and Section 1981) for making internal complaints of race discrimination and for filing EEOC charges by (1) denying Plaintiff commission compensation; (2) issuing her a final written warning regarding behavioral issues; and (3) terminating her employment. First, Judge Salinas concluded that Plaintiff abandoned her claim that ADT retaliated against her by denying her commissions because she failed to raise the issue in her response brief. Second, Judge Salinas concluded that Plaintiff did not establish a *prima facie* case of retaliation because she failed to show a causal connection between her first internal complaint of discrimination on January 28, 2018, and the issuance of a final written warning regarding behavioral issues on February 23, 2018. Judge Salinas noted that, while the Defendant had knowledge that she engaged in protected conduct prior to the final warning, Plaintiff also had documented behavioral and performance issues before and after Plaintiff made complaints of race discrimination. Third, Judge Salinas stated that Plaintiff failed to establish causation because temporal proximity alone, post-*Nasar*, is insufficient. Judge Salinas stated that Plaintiff failed to establish but-for causation and that even if her temporal proximity argument alone was enough,

the Eleventh Circuit rejected causation for shorter time periods between protected conduct and the adverse employment action.

Accordingly, Judge Salinas recommended that the motion for summary judgment be GRANTED in its entirety.