

## Summary Judgment Review

**Case Name:** *Waldera v. MarketSource, Inc.*

**Nature of the Order:** Order Adopting the Report & Recommendation and Granting Summary Judgment

**Magistrate Judge:** John K. Larkins III

**District Judge:** Timothy C. Batten, Sr.

**Claims & Outcomes:**

1. **Claim:** Pay Discrimination Based on Sex (EPA)
  - a. **Outcome:** Summary Judgment Granted
2. **Claim:** Pay Discrimination Based on Sex (Title VII)
  - a. **Outcome:** Summary Judgment Granted
3. **Claim:** Retaliation (EPA)
  - a. **Outcome:** Summary Judgment Granted
4. **Claim:** Retaliation (Title VII)
  - a. **Outcome:** Summary Judgment Granted

**Whether R&R Followed:** Yes

**For Race/Gender Discrimination Cases:**

**Race of Plaintiff:** N/A

**Gender of Plaintiff:** Female

**Summary**

Plaintiff Lindsey Waldera (“Waldera” or “Plaintiff”) began working for Defendant, MarketSource, Inc. (“MarketSource” or “Defendant”) in 2015 as a Finance Manager. MarketSource operates the “Target Tech” program, through which it staffs sales associates in Target stores. Waldera was initially assigned to support the Target Tech program. At this time, the Target Tech program had two male Operations Directors, Matthew Burns (“Burns”) and Justin Gorman (“Gorman”). Burns transitioned to a role outside the Target Tech program in September 2016, and in December 2016, Waldera was encouraged to apply for the vacant position. She was told that she would be taking on most of Burns’s responsibilities, along with some additional responsibilities. Waldera expected to receive a total compensation package between \$110,000 and \$140,000, based on her knowledge of Burns’s and Gorman’s compensation. In April 2017, Waldera was promoted. Her annual salary in the new position was \$86,500, and her bonus potential was \$20,000. At the time of his transfer, Burns was making \$109,241.60 in salary, with a \$30,000 bonus potential. Gorman’s salary was \$107,515.20, with a bonus potential of \$35,000.

In March or April 2017, Waldera expressed concern over her compensation to Tim Brannon (“Brannon”), the Executive Director of the Target Tech program. She specifically complained that her compensation did not mirror Gorman’s or Burns’s and asked if it was because she was a woman. Waldera continued to complain about her compensation to Brannon, and she also complained to an employee in human resources. In November 2017, Waldera learned that she would receive a transfer to a new role. In this capacity, she would supervise 15 to 25 individuals (she was previously supervisor four to six individuals), and some of her responsibilities would be shifted to Gorman. Her pay would increase by \$3,500. On April 13, 2018, Plaintiff notified Brannon that she was resigning because she was being undercompensated, among other things.

Waldera filed suit in this case, alleging sex-based pay discrimination in violation of Title VII and of the Equal Pay Act (“EPA”), along with retaliation under both statutes. MarketSource moved for Summary Judgment on all claims. Magistrate Judge John K. Larkins III recommended granting Defendant’s summary judgment motion on all claims. Plaintiff filed objections to the recommendation, but Chief District Judge Timothy C. Batten, Sr. overruled the objections.

As to the pay discrimination claims, Judge Batten repeated Magistrate Larkins’s highly fact-intensive analysis, finding that Burns and Gorman were not proper comparators under the EPA because they had materially different job responsibilities and their work was not substantially similar to Waldera’s. Judge Batten found that Burns and Gorman each had significantly different job responsibilities than Waldera. In addition, Waldera had not shown that her unique responsibilities were somehow equivalent to those of Burns and Gorman. Waldera’s argument that she and Gorman were the “left hand and right hand” for operations of the Target Tech program – in that their work complemented each other and both were necessary for the program – missed the point. Judge Batten held that their duties could both be necessary and yet required different skill, effort, and responsibility. Although Title VII isn’t as stringent in the level of similarity required to use a comparator, Judge Batten still found that Waldera failed to meet that standard, too. He also found that Plaintiff made no argument that MarketSource’s non-discriminatory justification for the pay differential – that Waldera had fewer job responsibilities and less experience – was pretext for discrimination. Thus, Judge Batten granted summary judgment as to the pay discrimination claims.

As to the retaliation claims, Judge Batten agreed with the Magistrate that Plaintiff had not shown she suffered from a materially adverse employment action – that is, one that would dissuade a reasonable employee from opposing discrimination. Waldera argued she suffered from an adverse action when her pay increase upon her transfer to a new role was less than Brannon had recommended for her and less than Gorman had received for a promotion. While Judge Batten affirmed that a pay increase can be an adverse action if, for instance, it is a significantly smaller increase than that of a comparator, he also concluded that Plaintiff could not show an adverse action here because he could not show a particular pay raise was typically given as a matter of course or that Plaintiff was otherwise entitled to expect or rely on it. Plaintiff also argued that her job transfer was an adverse action because it could impact future pay increases. But Judge Batten held that Plaintiff had provided no evidence of that future impact, and that no reasonable factfinder

could find that a transfer accompanied by a pay increase and an internal press release celebrating the change would dissuade a reasonable employee from opposing discrimination. Thus, Judge Batten granted summary judgment as to the retaliation claims.

For the above reasons, Chief District Judge Batten overruled Plaintiff's objections, adopted the recommendation of Magistrate Judge Larkins, and GRANTED summary judgment to Defendant on all claims.