

VERDICTS & SETTLEMENTS

FRIDAY, AUGUST 19, 2016

EMPLOYMENT LAW FEHA

Race and Gender Discrimination,
Retaliation, Wrongful Termination

SETTLEMENT: \$250,000

CASE/NUMBER:

Patricia Moss v. Otay Water District, Andrea Carey, Alice Mendez-Schomer, Mark Watton
/ 37-2014-00005818-CU-OECTL

COURT/DATE:

San Diego Superior / Feb. 17, 2016

JUDGE: Hon. Joan M. Lewis

ATTORNEYS:

Plaintiff — **Peggy A. Farrell**, Rene Potter
(Potter Handy LLP, San Diego)
Defendant — Richard E. Romero (Artiano,
Shinoff & Holtz, Temecula) for Otay Water
District

FACTS:

Plaintiff Patricia Moss was employed by defendant Otay Water District until her termination on Feb. 19, 2013. Plaintiff filed suit against Otay Water District and her former supervisors.

PLAINTIFF'S CONTENTIONS:

Plaintiff, an African-American woman, was employed by defendant and worked as a meter reader from 2006 until her termination in 2013. As of 2010, African American

women were severely underrepresented at Otay, with only three African American female employees in a workforce of over 100 employees. Plaintiff claimed Otay did nothing to remedy the underrepresentation, and instead encouraged it, consistent with a long history of discrimination based on race. Despite stellar performance reviews and an exemplary employment record, by 2013, plaintiff became the last of three African American women to be terminated by the same supervisor, Alice Mendez-Schomer.

In or about 2012, Mendez-Schomer informed everyone on the meter reading team, except plaintiff, that Otay needed someone to move over to the construction side, and work as a Utility Worker, a position which had never been held by a woman. When plaintiff learned of the opening, she submitted her interest in writing, and despite the fact that no other employee submitted any interest, Mendez-Schomer ignored plaintiff's request and instead selected a male employee for the position. Within a week of submitting her interest, Mendez-Schomer accused plaintiff of poor performance over the prior six months of her employment and claimed that her co-workers brought this issue to her attention. In fact, none of plaintiff's coworkers complained and the disciplinary action was pretextual. Plaintiff thereafter filed grievances against her supervisors through Otay's internal "Association," in which she complained of both race and gender discrimination with respect to the discipline. Each time she filed a grievance, she was given a disciplinary action. The discipline sought to punish her for

conduct that was not even a violation of policy. For example, plaintiff was disciplined for not attending a voluntary group photo, for not attending a co-worker's retirement party, for not greeting her supervisors and co-workers, for not "smiling right," for writing in all-caps even though that was her long time preference, and for taking too long in the bathroom. Her supervisors not only monitored her bathroom usage, but she was required to email her supervisors each time she exited the building and each time she used the bathroom, including identifying which bathroom she was using. Plaintiff's supervisors also made racially based comments to plaintiff, stating that her "skin was getting too dark," that she was "smarter than she looked," and other racial innuendos referring to her gestures and facial expressions. Despite plaintiff's repeated written and verbal complaints of discrimination to management and Human Resources, no investigation was undertaken by management and they instead told plaintiff they would not investigate her complaints. Plaintiff was ultimately terminated in retaliation for her complaints of discrimination, retaliation and harassment.

Plaintiff asserted causes of action for race and gender discrimination, harassment, retaliation and wrongful termination in violation of the Fair Employment & Housing Act.

RESULT: The parties settled for \$250,000.

FILING DATE: March 7, 2014.