

Verdicts & Settlements

Scientist who was passed over for promotion sues

Type of action: Employment

Injuries alleged: Lost wages and benefits, emotional distress

Name of case: Woghiren v. Wyeth and Wyeth Biopharma

Court/case #: U.S. District Court, No. 1:04-cv-12148 WGY

Tried before judge or jury: Jury

Name of judge: William G. Young

Special damages: Punitive damages and emotional distress

Amount of verdict: \$0 (defense verdict)

Date: Jan. 11, 2006

Demand: In excess of \$150,000

Highest offer: Submitted at confidential mediation

Attorneys: Michael A. Fitzhugh and Kristin Spriano, Boston (for the defendant)

Plaintiff's former colleagues testified about performance deficiency issues

Defense verdict

The plaintiff was an African-American scientist with a Ph.D. in analytical chemistry who held the position of principal scientist in the analytical science and technology group at the defendant's Andover facility. The plaintiff had transferred there in 2001 from the company's New York location, where he had received generally favorable employment evaluations.

A few months after the plaintiff transferred to Andover, his manager left the company, whereupon the plaintiff applied for the open position of associate director of the AS&T group. He was interviewed, but was denied the position, as was one of his Caucasian colleagues who had more experience and a higher salary grade level. The defendant had simultaneously sought external candidates for the position, and in late 2002 hired a Caucasian female to lead the group and upgraded the position to director.

In 2003, friction developed between the plaintiff and his new director. The plaintiff's 2003 annual evaluation was rendered by the director, and he received a grade of "meets expectations," which was lower than his 2002 grade of "exceeds expectations."

In January 2004, the director reorganized the AS&T group, and in the process removed the plaintiff from his previous duties as supervising a number of other scientists in the group. The plaintiff considered that a "demotion," even though he sustained no reduction in pay or benefits. Thereafter, however, he was given the lead role in a technology transfer from another of the defendant's facility, but his director determined that he had performed poorly on that project.

In April 2004, the plaintiff was placed in a "Performance Improvement Plan," and given a series of objectives to meet. He filed a claim with the MCAD alleging unlawful discrimination based upon his race and ethnic background. Ultimately, the plaintiff was terminated in September 2004, and thereafter added a claim of retaliation.

The plaintiff contended that although not a direct element of his claim, the failure to hire him for the assistant director position was a deviation from the defendant's past customary practice of "promoting from within," and evidence of a pattern of discrimination.

He also contended that the 2004 group reorganization was undertaken for the sole purpose of "demoting" him. In addition, he contended that his being assigned to lead the technology transfer was done to "set him up to fail," and that contrary to the director's assessment, he had performed quite effectively on that project.

The plaintiff also named, during discovery and on cross-examination at trial, a number of his former colleagues who would testify as to the numerous instances of unlawful disparate treatment that he, and other non-Caucasian staff, had been subjected to by the director.

In addition to testimony by the director, all of the plaintiff's former colleagues he had named as persons who would confirm his contentions of discrimination were called to testify. Each of them gave testimony that was consistent with the performance deficiencies noted by the director in her 2003 performance evaluation of the plaintiff, and in her notes that detailed his subsequent performance issues.



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Testimony was also given by the defendant's former HR representative who had been involved in the administration of the plaintiff's PIP, and it established that all of the company's processes and procedures had been followed without exception.

The plaintiff's prior employment evaluations were distilled so that certain comments that had manifested themselves in years prior to his tenure in Andover could be demonstrated as falling within a pattern of performance issues that ultimately became more pronounced in 2003 and 2004.

Additional evidence was submitted by way of a comparative chart, which illustrated that the director's 2003 grades of all members of the group did not evidence any pattern of her being more harsh on non-Caucasian members of her staff.

After two hours of deliberations, the jury, comprised of Caucasian and African-American members, returned a verdict in favor of the defendant on both the discrimination and retaliation claims.