



NYC ordered to pay up to \$128 mln in firefighter case

3/8/2012

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NEW YORK, March 8 (Reuters) - New York City could be on the hook for as much as \$128.7 million in a lawsuit alleging it used a [racially discriminatory test](#) to evaluate candidates for the New York City Fire Department, a federal judge ruled Thursday.

U.S. District Judge Nicholas Garaufis in Brooklyn said that \$128.7 million was the total amount of gross back pay that black and Hispanic firefighter candidates lost because they were either denied jobs or had their employment with the FDNY delayed because of the test. In previous rulings, Garaufis held that written examinations used by the city between 1999 and 2007 had "discriminatory effects" on minority applicants.

Garaufis noted in Thursday's ruling that the city "has had many opportunities to avoid financial liability of this magnitude."

"It has been in the city's power to prevent or remedy the need for damages proceedings for a decade, and it has not done so," the judge wrote.

He also ordered the city to fast-track the hiring of 293 black and Hispanic firefighter applicants.

Garaufis has sparred frequently with the city during the course of the five-year-old litigation. In January, the city asked the U.S. Circuit Court of Appeals for the 2nd Circuit to remove him from the case, calling him biased and press-obsessed. That request is pending.

The [U.S. Department of Justice](#), which brought the discriminatory hiring case in 2007, has estimated that 7,100 minority applicants took the tests deemed discriminatory by the court. Of those, about 2,200 will be eligible for monetary relief, the ruling stated.

Garaufis said on Thursday that \$128.7 million was a baseline figure. The city will have the chance to "reduce this amount significantly" during mitigation proceedings, in which court-appointed special masters will determine how much each individual claimant earned compared to what his salary would have been if he had received the FDNY job, he held.

'ERRONEOUS'

Plaintiffs' lead counsel, Richard Levy, applauded the ruling.

"After decades of exclusion, this decision brings us one step closer to a fire department that will welcome all qualified applicants of any race," he said in a statement.

But New York City Corporation Counsel Michael Cardozo said in a statement that the court's latest decision was "erroneous and, in any event, is the first step in a lengthy process."

"As the court itself noted, any damages the city ultimately must pay will be reduced by the amount each member of the class earned," Cardozo said. "When all the proceedings have been completed, the damages, if any, that the city will have to pay will be far less than \$128 million."

To oversee the claims process, Garaufis appointed four attorneys to serve as special masters. They are Steven Cohen of Zuckerman Spaeder; Hector Gonzalez of Dechert; Mitra Hormozi of Kirkland & Ellis; and Breon Peace of Cleary Gottlieb Steen & Hamilton.

All four are partners at their firms and previously worked as assistant U.S. attorneys in either the Southern or Eastern District of New York, according to the court.

Another special master, Mark Cohen of Cohen & Gresser, is currently overseeing the city's compliance with an injunctive order dictating a top-to-bottom overhaul in how the city recruits and hires minority firefighters.

The case is U.S. v. City of New York, in the U.S. District Court for the Eastern District of New York, No. 07-2067.

For the U.S.: Assistant U.S. Attorneys Elliot Schachner, Michael Goldberger and David Eskew for the U.S. Attorney's Office, Eastern District of New York; and Eric Bachman, Sharon Seeley, Allan Townsend, Barbara Schwabauer, Jennifer Swedish, Meredith Burrell and Varda Hussain of the U.S. Department of Justice.

For the Vulcan Society: Richard Levy, Dana Lossia and Robert Stroup of Levy Ratner; Anjana Samant and Darius Charney for the Center for Constitutional Rights; and Judith Scolnick of Scott and Scott.

For New York City: Assistant Corporation Counsel Georgia Pestana, William Fraenkel, Edward Sample, James Lemonedes, Kami Barker, Kathleen Comfrey, Patricia Miller and Vivien Ranada.

(Reporting by Jessica Dye)

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