

AUG 31 1995

For The Northern Mariana Islands
By J. J. [Signature]
(Deputy Clerk)

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

KATHLEEN A. GEORGE,)	Civil Action No. 94-0026
)	
Plaintiff)	
)	
v.)	DECISION AND ORDER RE
)	MOTIONS FOR SUMMARY JUDGMENT
LUIS S. CAMACHO, et al.,)	
)	
Defendants)	
_____)	

THIS MATTER came before the court on Friday, August 18, 1995, for hearing of three summary judgment motions: by plaintiff, by defendants Luis S. Camacho and Commonwealth Government (together with a motion to dismiss), and by defendant Civil Service Commission and its named members. Pamela Brown appeared on behalf of plaintiff; Assistant Attorney General Robert B. Dunlap II appeared on behalf of defendants Luis S. Camacho and Commonwealth Government; and, Patricia Halsell appeared on behalf of the Civil Service Commission and its named members.

Plaintiff seeks recovery on several theories: 42 U.S.C. § 1981 (race discrimination), § 1983 (denial of equal protection of the laws; due process violation), § 1985(3) (conspiracy), and § 1986 (action for neglect to prevent conspiracy), direct causes of action under the First and Fourteenth Amendments, for injunctive relief, and

1 for intentional or negligent infliction of emotional distress.

2 Summary judgment is appropriate if, viewing the evidence in the light most
3 favorable to the non-moving party, there is no genuine issue as to any material fact and
4 the moving party is entitled to judgment as a matter of law. Anderson v. Liberty Lobby,
5 477 U.S. 242, 247, 106 S.Ct. 2505, 2510 (1986); Jesinger v. Nevada Federal Credit
6 Union, 24 F.3d 1127, 1130 (9th Cir. 1994); Fed. R. Civ. P. 56(c). The burden rests on
7 the moving party to demonstrate the absence of a genuine issue of material fact, Adickes
8 v. S.H. Kress & Co., 398 U.S. 144, 157, 90 S.Ct. 1598, 1608 (1970), and once this
9 burden is met, the non-movant must come forward with evidence raising a triable issue
10 of fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 326, 106 S.Ct. 2548, 2552, 2554
11 (1986).

12 A trial court may not weigh conflicting versions of fact on a motion for summary
13 judgment. "Rule 56 calls for the judge to determine whether there exists a genuine issue
14 for trial, not to weigh the evidence himself and determine the truth of the matter."
15 Baxter v. MCA, Inc., 812 F.2d 421, 424 (9th Cir.), cert. denied, William v. Baxter, 484
16 U.S. 954, 108 S.Ct. 346 (1987), citing Anderson v. Liberty Lobby, Inc., 477 U.S. at 242.

17 THE COURT, having considered the written and oral arguments of counsel, and
18 being otherwise advised, makes the following findings of fact and conclusions of law.

19
20
21
22 Findings of Fact

23 There is no genuine issue as to these material facts:

- 24 1. Plaintiff Kathleen A. George is a Caucasian woman.
25 2. Defendant Luis S. Camacho was at all relevant times the Acting Director or
26

1 Director of the Commonwealth of the Northern Mariana Islands (CNMI) Office of
2 Personnel Management (OPM).

3
4 3. Defendant Agnes M. McPhetres was at all relevant times the President of
5 Northern Marianas College (the College).

6 4. Eugene A. Santos was at all relevant times Chairman of the CNMI Civil
7 Service Commission.

8 5. Defendants Felix R. Fitial, Vicente M. Sablan, Juanita S. Malone, Jesus I.
9 Taisague, and Juan Q. Guerrero were at all relevant times members of the CNMI Civil
10 Service Commission.

11
12 6. The CNMI civil service system has two general categories of employees: 1)
13 classified employees, who are career employees within the civil service system, and 2)
14 ungraded, unclassified excepted service contract employees (hereinafter referred to as
15 unclassified civil service employees). These latter employees are employed pursuant to
16 individually-executed employment contracts.

17
18 Confusingly, there is another type of government employee referred to as
19 "excepted service." These are employees who are completely excepted, or exempt, from
20 the civil service system and its regulations by Title 1 Commonwealth Code § 8131(a).
21 These employees are wholly outside the civil service system in every respect, and entitled
22 to none of its job security protections or procedural safeguards.

23
24 7. Plaintiff voluntarily changed her status from a career civil service employee
25 to a § 8131 excepted service employee, totally exempt from all aspects of the CNMI civil
26 service system. Her contract certified, improperly, that she was a § 8131 excepted service

1 employee. See discussion infra.

2 8. It is and has always been the policy of both the Personnel Office (and its
3 successor, OPM) and the Civil Service Commission to provide housing only to off-island
4 hires, whether they are § 8131 excepted service employees or unclassified civil service
5 employees.¹ (Housing is nowhere mentioned in the civil service Personnel Service
6 System Rules and Regulations (PSSRRs), because the PSSRRs cover only classified,
7 permanent civil service employees.)
8

9 9. Section 8131 excepted service contract employees receive government housing
10 or a monetary housing allowance pursuant to a term of their contract; the contract term
11 states explicitly that housing will be provided only to excepted service employees.
12 Standard "Conditions of Employment," ¶ 6(E)(Rev. 4/90). Section 8131 excepted service
13 contracts can also offer benefits not available to classified, permanent civil service
14 employees, including travel expenses for the employee and family members from and back
15 to the point of hire, and shipment of household goods from and back to the point of hire.
16

17 10. Plaintiff was hired April 11, 1990, by the CNMI Personnel Office as a
18 Personnel Specialist/Trainer.
19

20 11. The position for which plaintiff originally was hired is one which leads to
21 a permanent, classified position within the CNMI civil service system if the employee
22 successfully completes his or her "Limited Term Appointment" for a period of one year.
23

24 ¹ There is apparently one classified civil service on-island hire who is presently
25 occupying government housing for reasons never explained on the record. However, this
26 is the only instance brought to the court's attention of a "non-qualifying" employee being
provided government housing. Defendant CNMI government conceded at oral argument
that this person's occupancy of a government house was highly questionable.

1 PSSRRs, Part III, sub-part B.3(c). Plaintiff completed her one year "probation" and was
2 converted to the status of a permanent, classified civil service employee on March 23,
3 1991.
4

5 12. In November or December of 1991, plaintiff went to Jesus Mafnas, then
6 Director of the Personnel Office, and told him that, due to changes in her personal life,
7 she would need to be provided government housing if she were to continue her
8 employment with the Personnel Office.
9

10 13. As discussed earlier, by dint of long-standing tradition, although not by
11 statute or regulatory rule, government housing is only provided to employees who are
12 hired off-island and brought to the CNMI to work for the CNMI government as either §
13 8131 excepted service contract employees or unclassified civil service contract employees.
14

15 14. Mafnas told plaintiff housing could only be made available to her if she
16 resigned her classified position and entered into a § 8131 excepted service contract.
17 Plaintiff executed a "Request for Personnel Action," in which she resigned from her
18 employment and, consequently, the CNMI civil service system. On that same day,
19 December 2, 1991, she signed Excepted Service Contract No. C67413-01, and resumed
20 the same position from which she had just resigned, but no longer as a permanent,
21 classified civil service employee, with the civil service system's attendant employment
22 protections.
23

24 15. Plaintiff was not an off-island hire and would not ordinarily have been given
25 housing. For whatever reasons, Mafnas agreed to violate the usual policy and provide
26 housing for her. Plaintiff and Mafnas knowingly misrepresented plaintiff as an off-island

1 hire and a § 8131 excepted service employee to complete the subterfuge that she was
2 entitled to housing.

3
4 16. There is absolutely no evidence in the record that Mafnas "forced" plaintiff
5 to accept this new arrangement. To the contrary, all evidence indicates that plaintiff
6 initiated the contact with Mafnas and was eager to change her employment status to
7 receive the housing to which she would not otherwise have been entitled. George
8 Deposition, p. 111, l. 15-25, to p. 112, l. 1-9; p. 116, l. 12-16.

9
10 17. Plaintiff renewed her § 8131 excepted service contract two years later, on
11 December 15, 1993. She received a raise and an increase from four to six hours per pay
12 period of accrued annual leave. She continued to receive housing.

13
14 18. Both the 1991 and 1993 excepted service contracts signed by plaintiff
15 contained an early termination clause, which provided that the "employer may terminate
16 the employee without cause upon notice sixty days in advance of termination of
17 employment."

18 19. Plaintiff was aware that her contract contained the termination provision.

19
20 20. In March of 1994, Governor Froilan Tenorio issued Executive Order (EO) 94-
21 2, which purported to abolish the Personnel Office and establish in its stead the OPM.
22 Under EO 94-2, all personnel training functions were to be transferred from OPM to the
23 Northern Marianas College. Defendant Camacho was appointed Director of OPM on May
24 24, 1994.

25
26 21. Prior to its effective date, EO 94-2 was struck down by the Commonwealth
Superior Court. Governor Tenorio then issued Executive Order 94-3 (EO 94-3) in June,

1 1994, which included, among many other changes to the executive branch of the CNMI
2 government, the same provisions regarding the changes to the former Personnel Office
3 and the transfer of all training functions from the newly-renamed OPM to the College.
4 Defendant Camacho was again appointed Director of OPM.
5

6 22. There was considerable confusion regarding the transfer of training functions
7 to the College. It was initially believed that all personnel trainers would be transferred
8 to the College, where they would continue their employment status. Under EO 94-2, it
9 was directed that these personnel be transferred effective May 25, 1994, and, in
10 accordance with EO 94-2, Camacho directed all affected personnel to report to the College
11 on June 1, 1994.
12

13 23. College officials expressed their concern that the transfer of personnel could
14 affect the College's accreditation, since College employees were required by CNMI law to
15 be autonomous from the CNMI government and its civil service system. CNMI P.L. 4-34;
16 CNMI Attorney General's Opinion (Oct. 11, 1985). The Western Association of Schools
17 & Colleges had previously indicated that the College's accreditation would be at risk if the
18 College were not autonomous. Def. Ex. K, Letter from Manuel F. Borja to Attorney
19 General Richard Weil (July 7, 1994). The College wished OPM to retain the training
20 functions, as did Director Camacho. However, the effort to have OPM retain training
21 functions failed and the training functions were transferred to the College.
22

23 24. Once EO 94-3 took effect and personnel training functions were transferred
24 to the College, Camacho had no power or authority to retain training functions at OPM.
25

26 25. Even though the functions of personnel training were transferred to the

1 College, the OPM personnel were not transferred because of the College's concern over
2 its accreditation if it did not maintain its autonomy from the CNMI government. All
3 affected personnel, including plaintiff, were encouraged in writing by defendant Camacho
4 to apply for the newly-created positions at the College.
5

6 26. On July 21, 1994, OPM Director Camacho gave notice to plaintiff, pursuant
7 to the terms of her § 8131 excepted service contract, that her employment would be
8 terminated in sixty days because the position she held as personnel trainer was no longer
9 part of OPM. Camacho's letter informed plaintiff that, by virtue of EO 94-3, the duties
10 of plaintiff's job had been transferred from OPM to the College and he again suggested
11 that she apply for the training position at the College.
12

13 27. Because plaintiff had been hired under a § 8131 excepted service contract
14 and was thus not a classified, permanent civil service employee, Camacho and OPM were
15 under no obligation to secure new employment for her within OPM.
16

17 28. Plaintiff never applied for a personnel training position at the College.

18 29. Plaintiff never requested that she be converted back to a classified civil
19 service position from her employment as a § 8131 excepted service contract employee.
20

21 30. There was absolutely no evidence presented that Camacho and Agnes
22 McPhetres, President of the College, conspired against plaintiff in any way.
23

24 31. There was absolutely no evidence that the Civil Service Commission, either
25 as a body or through one or more of its individual members, ever conspired with anyone
26 against plaintiff.

32. There was absolutely no evidence presented that plaintiff was the victim of

1 race or sex discrimination. To the contrary, the uncontroverted evidence showed that
2 Camacho attempted to retain all personnel training functions at OPM and would have
3 retained plaintiff had he been able to do so. The evidence also showed that he suggested
4 that she apply for the newly-created position at the College. There was no evidence
5 presented by plaintiff to call into question Camacho's sincerity in this regard. Plaintiff
6 does not, as she could not based on this record, maintain that Governor Tenorio's wide-
7 ranging executive reorganization plans were in fact a mere subterfuge designed solely to
8 drive her out of government service.
9

10
11 33. There was absolutely no evidence to support plaintiff's claim that her
12 termination was somehow intended as punishment because she exercised her First
13 Amendment rights to free speech and free association. Plaintiff admitted that the
14 Executive Orders were not directed at her because of her political affiliation. George
15 Deposition, p. 153, l. 21-22 through p. 154, l. 11.
16

17 34. While defendant may have been understandably dismayed at the turn of
18 events which caused her position at OPM to be terminated, she took no steps to seek
19 employment doing the same work at the College and she took no steps to see if she could
20 be converted back to a classified, permanent civil service position.

21 35. There was absolutely no evidence to support plaintiff's claim for intentional
22 or negligent infliction of emotional distress.
23

24 Conclusions of Law

25 1. There is no direct action claim against the CNMI under the First or Fourteenth
26 Amendments to the United States Constitution. Magana v. CNMI, et al., No. 94-00028

1 (DCNMI Apr. 12, 1995)(Order re Motions for Summary Judgment).

2 2. Plaintiff's claim under the First Amendment, whether under 42 USC § 1983
3 or otherwise, fails because it is entirely unsupported. Plaintiff did not carry her burden.
4

5 3. Title 42 USC § 1981 does not support a claim for sex discrimination. Runyon
6 v. McCrary, 427 U.S. 160, 96 S.Ct. 2586 (1976). In any event, plaintiff produced no
7 evidence of discrimination against her based on her sex.

8 4. Plaintiff failed to make out a prima facie case of race discrimination under 42
9 USC § 1981. There was no evidence presented that any action was taken against her due
10 to her race.
11

12 5. Based on the uncontroverted evidence before the court, plaintiff is, as a matter
13 of law and equity, estopped from attempting to assert civil service system-based due
14 process rights. The record reflects that plaintiff was a knowing and willing participant
15 in a scheme to, essentially, fraudulently obtain a contract benefit to which she would not
16 have normally been entitled. However, to obtain this benefit (based on the false
17 representation that she was an off-island hire), she voluntarily and knowingly resigned
18 her civil service system position and, with her resignation, left the CNMI civil service
19 system and forfeited the civil service system's ancillary due process protections. Plaintiff
20 knew what she was doing and she did it voluntarily and willingly. Both sides got the
21 benefit of their bargain and plaintiff cannot now come before the court with unclean
22 hands, seeking to invoke civil service protections which she relinquished when she
23 resigned her civil service position.
24

25 6. Plaintiff presented no evidence sufficient to maintain a claim for intentional
26

1 or negligent infliction of emotional distress. Commonwealth law requires that
2 intentionally inflicted emotional distress be severe, and the Commonwealth does not
3 recognize a cause of action for negligent infliction of emotional distress without bodily
4 harm. Arriola v. Insurance Co. of North America, 2 Commonwealth Reporter 113 (1985).
5 At best, plaintiff's feelings were hurt and she had a diffuse, inarticulable feeling that no
6 one cared about her or anyone else's "mental or emotional state" during the transition
7 period occasioned by the Executive Orders. George Deposition, p. 181, l. 9 to p. 182, l.4.

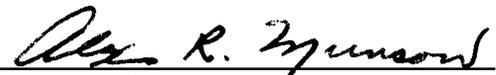
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9 Alternatively, the common law causes of action are DISMISSED for want of
10 jurisdiction because the federal causes of action to which they were appended have been
11 resolved adversely to plaintiff.
12

13 7. Plaintiff's claim for injunctive relief has been rendered moot by the court's
14 decision on her other causes of action.

15 FOR THE FOREGOING REASONS, plaintiff's motion for summary judgment is
16 DENIED in its entirety; the summary judgment of defendant Camacho and CNMI is
17 GRANTED; and, the summary judgment of defendant Civil Service Commission and its
18 individual members is GRANTED.
19

20 IT IS SO ORDERED.

21 DATED this 31st day of August, 1995.

22
23 

24 Alex R. Munson
25 Judge
26