

“Jury hands Tracy victory in wrongful firing lawsuit”

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After a two-week trial, a jury this month ruled against the former head of Tracy's personnel department who claimed she was wrongfully fired in 2004.

The case boiled down to one question for the jury: Was Kathy McFall fired in retaliation for discrimination complaints she had made?

"No," the jury answered in a verdict read in court on Nov. 9.

"The result speaks for itself in the city being absolutely correct in its actions," said Tracy's trial attorney Arthur Hartinger of the Meyers Nave law firm in Oakland. "The city always thought it had a meritorious case."

It's a case that's not quite over yet, as attorneys are scheduled to be back in court Jan. 14, when McFall and her San Francisco attorney John Scott will try to convince Judge Lesley Holland that she should not have to pay \$111,278.65 in city costs to defend itself.

McFall also filed a motion for a new trial, arguing Holland mistakenly allowed some evidence in, and made mistakes in jury instructions as well.

McFall, a black woman, was hired in 2001 as head of Tracy's personnel department, and she said in a 2005 lawsuit that serious trouble started between her and then-assistant city manager Julie Yuan-Miu over the 2002 hiring of Sharon Marr, an assistant in the personnel department.

McFall claimed Yuan-Miu forced her to hire Marr, who McFall described as a Yuan-Miu friend who's white, rather than a more qualified black man who applied for the job.

McFall claimed that Marr, as predicted, failed to do her job properly, yet Yuan-Miu not only defended Marr, but started to "build a file" on McFall, according to the lawsuit, lining up co-workers who had complaints about the department head.

McFall also said complaints to then-city manager Fred Diaz went nowhere, and she named him in the lawsuit as well.

McFall went out on stress leave in January of 2003, and returned to work in May, but was ultimately fired in May of 2004, and the lawsuit followed in 2005. Marr resigned in December of 2002.

McFall claimed retaliation, harassment, discrimination based on race and because she was a “whistle blower,” defamation and intentional infliction of emotional distress. The judge however dismissed several of those claims.

Last year, McFall declined an offer to settle the case for \$75,000, and she was the first witness to take the stand in the trial that began Oct. 22.

She was on the stand for parts of all of four days, Hartinger said, and she also testified as a rebuttal witness.

Hartinger said he thought it was key that the jury heard from Yuan-Miu shortly after they heard McFall’s testimony.

McFall’s attorney Scott could not be reached for comment.

Hartinger said he’d fight both the motion for a new trial and McFall’s attempt to avoid paying city costs. She filed papers that said she lost about \$300,000 in income during the ordeal in Tracy, paid \$15,000 for expert witnesses, and build up about \$40,000 in debt.

She now works as a consultant to the personnel department of Marina near Carmel. Hartinger said court records showed she earned \$160,000 last year.

“It’s a shame that it went this far, as far as I’m concerned,” said Mayor Brent Ives. “Quite frankly, there was no veracity in the claims all along.”

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