

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**WILLIAM DRAKE II,**

**Plaintiff,**

**v.**

**RADIOSHACK CORP.,**

**Defendant.**

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**CIVIL ACTION  
No. 06-1004**

---

**MEMORANDUM OPINION AND ORDER**

**RUFE, J.**

**April 20, 2007**

This is an employment-discrimination action in which Plaintiff William Drake II has sued his former employer, Defendant RadioShack Corporation, alleging racial discrimination under Title VII of the Civil Rights Act of 1964,<sup>1</sup> 42 U.S.C. § 1981, and the Pennsylvania Human Relations Act (“PHRA”).<sup>2</sup> Before the Court are Defendant’s Motion for Summary Judgment [Document No. 22], Plaintiff’s Memorandum of Law in Opposition to Defendant’s Motion for Summary Judgment [Document No. 24], and Defendant’s Reply to Plaintiff’s Response to Defendant’s Motion for Summary Judgment [Document No. 26].<sup>3</sup> For the reasons that follow, Defendant’s Motion for Summary Judgment will be granted in part and denied in part.

---

<sup>1</sup> 42 U.S.C. § 2000e *et seq.* (2000).

<sup>2</sup> 43 Pa. Stat. Ann. § 954 *et seq.* (1990).

<sup>3</sup> At the outset, the Court notes RadioShack’s concerns related to the Affidavit of Sean Mangan on which Plaintiff relies in its Memorandum of Law in Opposition to Defendant’s Motion for Summary Judgment. Without additional evidence and in the absence of any motions before the Court concerning the legitimacy of this Affidavit, the Court accepts this Affidavit, and Plaintiff’s arguments based on it, as proper for purposes of this decision.

## I. FACTUAL AND PROCEDURAL HISTORY

Because this motion is one for summary judgment, the Court views the factual record in the light most favorable to Drake, the non movant.<sup>4</sup> In June 2000, RadioShack hired Drake, an African-American male, as a Manager in Training at its Coventry Mall retail store in Pottstown, Pennsylvania.<sup>5</sup> In February 2001, RadioShack transferred Drake to its Phoenixville, Pennsylvania retail store and promoted him to the position of Manager.<sup>6</sup> Drake's former supervisor testified that throughout the course of Drake's employment, he performed his job at a high level.<sup>7</sup>

Drake's District Manager, Dave Goodwin, and his Regional Manager, Mark Clarke, invited Drake to participate in RadioShack's District Manager Candidate School ("Candidate School") in January 2003.<sup>8</sup> Drake was to complete a 12-month term to be eligible for a position as District Manager.<sup>9</sup> Clarke, however, removed Drake from Candidate School before he could complete the program based on the failure of Drake's store to adhere to RadioShack's clipboard program—a program that tracks both inventory and each store's adherence to RadioShack's operating procedures.<sup>10</sup>

In February 2004, RadioShack again transferred and promoted Drake to the position

---

<sup>4</sup> Elliot & Frantz, Inc. v. Ingersoll-Rand Co., 457 F.3d 312, 318 (3d Cir. 2006).

<sup>5</sup> Second Am. Compl. ¶ 11.

<sup>6</sup> Id. ¶ 13.

<sup>7</sup> Pl.'s Mem. of Law in Opp'n to Def.'s Mot. for Summ. J., at 1 (citing David Goodwin Dep. at 14:17-20).

<sup>8</sup> Second Am. Compl. ¶ 17.

<sup>9</sup> Id. ¶ 19.

<sup>10</sup> Def.'s Mot. for Summ. J. ¶ 6 (citing Drake Dep. at 35-39).

of Manager at its Coventry Mall location.<sup>11</sup> Drake replaced Jimmy Michaels, a Caucasian male, who was promoted to RadioShack's King of Prussia location upon Drake's promotion.<sup>12</sup> In conformance with RadioShack policy and procedure, Drake and Michaels performed an exit inventory.<sup>13</sup> Drake noticed that a number of items were missing, including cable modems and cell phones, which he subsequently reported missing to District Manager Dave Goodwin, Associate District Manager Dave Homa, District Operations Manager Jim McCarthy, Regional Loss Prevention Manager Jeff Meyers, and Sean Mangan, Manager of RadioShack's Exton, Pennsylvania retail store.<sup>14</sup> Drake further reported his belief that Michaels was "padding the inventory," i.e., intentionally misreporting inventory in order to ensure receipt of a bonus.<sup>15</sup> An audit was ultimately conducted by Dave Homa, Jim McCarthy, and Jeff Meyers, confirming the missing merchandise that Drake had reported.<sup>16</sup> The value of the missing merchandise totaled no more than \$400.00.<sup>17</sup>

In February 2005, RadioShack promoted Drake to the position of Manager at its Quaker Bridge Mall retail store.<sup>18</sup> Drake again conducted an exit inventory at the Coventry Mall

---

<sup>11</sup> Second Am. Compl. ¶ 21.

<sup>12</sup> Id. ¶ 22.

<sup>13</sup> Id. ¶ 23.

<sup>14</sup> Id. ¶¶ 24-28; Pl.'s Mem. of Law in Opp'n to Def.'s Mot. for Summ. J., at 3-4 (citing Drake Dep. at 108:4-9, 109:2-17). Drake later informed Mark Schmoayk, his new District Manager hired in May 2004, about the missing inventory. Second Am. Compl. ¶¶ 33-34.

<sup>15</sup> Second Am. Compl. ¶¶ 24-28.

<sup>16</sup> Pl.'s Mem. of Law in Opp'n to Def.'s Mot. For Summ. J., at 4 (citing Mangan Aff. ¶ 12; Drake Dep. at 110:8-24, 111:1-14; Homa Dep. at 26:5-22).

<sup>17</sup> Second Am. Compl. ¶ 25.

<sup>18</sup> Id. ¶ 37.

retail store.<sup>19</sup> The missing cable modems were again identified during the inventory.<sup>20</sup> Based on this missing inventory, RadioShack terminated Drake's employment for falsifying inventory reports and for preventing an accurate accounting of his store's profits and losses for over a year.<sup>21</sup>

Drake subsequently commenced this action on March 6, 2006, alleging that RadioShack removed him from Candidate School based on his race, and that RadioShack terminated his employment based on his race. At the close of discovery, Defendant filed its Motion for Summary Judgment on February 20, 2007, which is now before the Court.

## **II. SUMMARY-JUDGMENT STANDARD**

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." A genuine issue of material fact exists when "a reasonable jury could return a verdict for the nonmoving party."<sup>22</sup> "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment."<sup>23</sup> All inferences must be drawn, and all doubts resolved, in favor of the nonmoving party.<sup>24</sup>

---

<sup>19</sup> Id. ¶ 38.

<sup>20</sup> Id.

<sup>21</sup> Id. ¶ 40; Def.'s Reply Mem. of Law in Further Support of its Mot. For Summ. J., at 1.

<sup>22</sup> Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

<sup>23</sup> Id.

<sup>24</sup> Id. at 255.

If the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the nonmoving party to “do more than simply show that there is some metaphysical doubt as to the material facts.”<sup>25</sup> The nonmoving party cannot “rely merely upon bare assertions, conclusory allegations or suspicions” to support its claim.<sup>26</sup> To the contrary, a mere scintilla of evidence in support of the nonmoving party’s position will not suffice; there must be evidence on which a jury could reasonably find for the nonmovant.<sup>27</sup> Accordingly, “Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.”<sup>28</sup>

In a Title VII discrimination case where no direct evidence of intentional discrimination is present, as is the case here, the Court applies the burden-shifting test established by the Supreme Court in McDonnell Douglas Corp. v. Green.<sup>29</sup> “The complainant in a Title VII trial must carry the initial burden under the statute of establishing a *prima facie* case of racial discrimination.”<sup>30</sup> “The burden then must shift to the employer to articulate some legitimate, nondiscriminatory reason for the employee's rejection.”<sup>31</sup> Once the employer articulates a

---

<sup>25</sup> Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

<sup>26</sup> Fireman’s Ins. Co. v. DuFresne, 676 F.2d 965, 969 (3d Cir. 1982).

<sup>27</sup> Liberty Lobby, 477 U.S. at 252.

<sup>28</sup> Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

<sup>29</sup> 411 U.S. 792 (1973).

<sup>30</sup> Id. at 802.

<sup>31</sup> Id.

nondiscriminatory reason, the complainant must respond by citing evidence that the employer's rationale is pretextual.<sup>32</sup> "In order to create a genuine issue of material fact as to whether the proffered reasons are pretextual, [the complainant] must 'point to some evidence, direct or circumstantial, from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action.'"<sup>33</sup> "[T]o survive summary judgment the plaintiff need not also come forward with additional evidence of discrimination beyond his or her *prima facie* case."<sup>34</sup>

### **III. DISCUSSION**

Drake endeavors to assert racial-discrimination claims under Title VII, 42 U.S.C. § 1981, and the PHRA by contending, *inter alia*, that in both removing him from Candidate School in 2003 and terminating his employment in 2005, RadioShack discriminated against him on the basis of his African-American race. In this regard, Drake's Second Amended Complaint avers that RadioShack's decisions to remove him from Candidate School based on his failure to adhere to the clipboard program, and to terminate his employment based on his falsification of inventory reports, were mere pretexts to RadioShack's underlying discriminatory motives. To this end, Drake alleges that he was disparately treated by RadioShack as compared to similarly situated Caucasian

---

<sup>32</sup> *Id.* at 804.

<sup>33</sup> *Tomasso v. Boeing Co.*, 445 F.3d 702, 706 (3d Cir. 2006) (quoting *Fuentes v. Perskie*, 32 F.3d 759, 764 (3d Cir. 1994)).

<sup>34</sup> *Fuentes*, 32 F.3d at 764.

employees.<sup>35</sup>

A disparate-treatment violation is established when an individual of a protected group is shown to have been singled out and treated less favorably than others similarly situated on the basis of an impermissible criterion under Title VII.<sup>36</sup> To establish entitlement to relief under a theory of disparate treatment, the plaintiff must first establish by a preponderance of the evidence a *prima facie* case of discrimination.<sup>37</sup> The plaintiff can establish a *prima facie* case by showing: (1) that he or she is a member of a protected class; (2) that he or she was qualified for the job but was nevertheless rejected for the position; and (3) that non members of the protected class were treated more favorably.<sup>38</sup> If the plaintiff is able to establish such a *prima facie* case, the first part of the three-part burden-shifting framework announced in McDonnell Douglas is satisfied.

Here, Drake is a member of a protected class, and, reviewing the facts before the Court in the light most favorable to Drake, a reasonable jury could find that Drake was qualified for both Candidate School and managerial positions for which he was employed at RadioShack. Accordingly, the Court need only determine whether a reasonable jury could find that members of other races were treated more favorably by RadioShack to find that Drake has established a *prima facie* case of disparate treatment. If the Court so finds, it must then determine whether a reasonable jury could conclude that a legitimate, nondiscriminatory, non pretextual reason existed for Drake's removal from Candidate School and his subsequent termination, or conclude that this discriminatory

---

<sup>35</sup> Second Am. Compl. ¶¶ 20, 32.

<sup>36</sup> EEOC v. Metal Serv. Co., 892 F.2d 341, 347 (3d Cir. 1990).

<sup>37</sup> Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 252 (1981).

<sup>38</sup> See Ezold v. Wolf, Block, Schorr and Solis-Cohen, 983 F.2d 509, 522 (3d Cir. 1992).

bias toward African-Americans resulted in Drake's removal and subsequent termination.

**A. RadioShack's Removal of Drake from Candidate School**

After completing eleven months of the twelve-month district manager candidate program, RadioShack removed Drake from the program based on his store's failure to adhere to RadioShack's clipboard program. Drake alleges that his removal was based not on his own shortcomings, but his assistant manager's failure to adhere to RadioShack's procedures on a day that Drake had not been working.<sup>39</sup> Drake then alleges that from 2000 through 2003, there have been only three African-American employees invited to participate in District Manager Candidate School and that none of them became a district manager.<sup>40</sup> When a Philadelphia-area district-manager position became available in July 2004, it was given to a Caucasian retail-store manager from New York.<sup>41</sup>

RadioShack counters that participants in Candidate School were on notice that RadioShack expected "100 percent execution" of the clipboard program, and that even after several warnings to Drake for his noncompliance, Drake failed to meet RadioShack's expectations.<sup>42</sup> Additionally, Drake had two violations of company policy through the loss-prevention department related to RadioShack's return procedures—violations which Drake acknowledges.<sup>43</sup> Drake also

---

<sup>39</sup> Pl.'s Mem. of Law in Opp'n to Def.'s Mot. for Summ. J., at 2 (citing Drake Dep. at 30:9-24, 31:1-9, 32:1-3).

<sup>40</sup> Id. at 2-3 (citing Clarke Dep. at 28:8-13, Exh. 1; Homa Dep. at 71:11-21).

<sup>41</sup> Id. at 3 (citing Smoyak Dep. at 9:2-12:16).

<sup>42</sup> Def.'s Reply Mem. of Law in Further Support of its Mot. for Summ. J., at 9-10, Ex. Q (citing Apr. 9, 2003 Store Visit Report).

<sup>43</sup> Id. at 9 (citing Clarke Dep. At 35:22-36:1; Drake Dep. 30:22-31:7, 31:20-23).

admits that he failed to follow up with his assistant manager about the procedural failures that led to his removal from the program.<sup>44</sup> With respect to others partaking in Candidate School, Beth Heintjes, a Caucasian female, was removed from Candidate School for violating company policy, and Cliff Sorell, an African-American male, was promoted to Assistant District Manager in June 2005, and later promoted to District Manager in the New York region.<sup>45</sup>

Even when reviewing these facts in the light most favorable to Drake, Drake has failed to establish a *prima facie* case of disparate treatment—none of these facts establish that members of other races were treated more favorably than African-Americans. To the contrary, a Caucasian member of Drake’s class was removed for violating company policy, the same general reason giving rise to Drake’s removal, and an African-American member of his class has since been appointed District Manager of the New York region. Drake was even encouraged to apply for the class again in the following year.<sup>46</sup>

Moreover, even assuming arguendo that Drake could establish a *prima facie* case of disparate treatment, a reasonable jury could find the fact that Drake did not comply to the clipboard program as required by RadioShack policy, in combination with his two violations of the company’s return procedures, is a legitimate, nondiscriminatory basis for Drake’s removal from the program. The fact that only three African-Americans were invited to participate in Candidate School between 2000 and 2003 is insufficient to establish pretext and a reasonable jury could not conclude otherwise

---

<sup>44</sup> Pl.’s Mem. of Law in Opp’n to Def.’s Mot. for Summ. J., at 2 (citing Drake Dep. at 30:9-24, 31:1-9).

<sup>45</sup> Def.’s Reply Mem. of Law in Further Support of its Mot. for Summ. J., at 10 (citing Clarke Dep. 34:1-35:7, 43:12-21).

<sup>46</sup> Id.

without more evidence. Accordingly, the Court grants Defendant's Motion for Summary Judgment as it relates to RadioShack's removal of Drake from Candidate School.

**B. RadioShack's Termination of Drake**

Drake further asserts that RadioShack's termination of his employment in 2005 was racially motivated, and that basing his termination on his falsification of inventory reports was mere pretext. Drake's allegations are grounded in the exit inventory that he and Jimmy Michaels conducted at the time he replaced Michaels as manager at the Coventry Mall retail store, and the manner in which RadioShack handled the resulting inventory discrepancies. Drake asserts that District Manager Dave Goodwin instructed him to carry the missing modems as inventory until the New Year, at which time a bonus adjustment would be made and the modems would be taken off Plaintiff's inventory.<sup>47</sup> Despite this instruction from Goodwin, RadioShack conducted an inventory audit of Drake's Coventry Mall store in March 2005 because an inventory discrepancy was discovered when Drake left that store to become Manager of the Quaker Bridge Mall retail store.<sup>48</sup> To this end, Drake asserts that the missing inventory discovered in March 2005 was the same inventory that was discovered missing in February 2004 when he conducted the exit inventory with Michaels.<sup>49</sup> RadioShack terminated Drake based on this discrepancy in inventory and took no action

---

<sup>47</sup> Pl.'s Mem. of Law in Opp'n to Def.'s Mot. for Summ. J., at 5 (citing Drake Dep. at 116:4-24, 117:1-5, 120:5-7; Meyers Dep. at 91:22-24, 92:1).

<sup>48</sup> Def.'s Reply Mem. of Law in Further Support of its Mot. for Summ. J., at 5, Ex. N (citing Meyers Dep. at 26:11-27:5, 98:16-20).

<sup>49</sup> Pl.'s Mem. of Law in Opp'n to Def.'s Mot. for Summ. J., at 6 (citing Mangan Aff. ¶ 19; Clarke Dep. at 128:6-13).

against Michaels.<sup>50</sup> A reasonable jury could conclude that this alone suffices to establish a *prima facie* case of disparate treatment.

RadioShack proffers that the nondiscriminatory, legitimate basis for Drake's termination is that Drake admitted to falsifying inventory reports for month after month and prevented an accurate accounting of that store's profits and losses for well over a year.<sup>51</sup> If Dave Goodwin instructed Drake to carry this inventory, however, thereby effectively instructing Drake to falsify the inventory, a reasonable jury could conclude that Drake's termination for following this instruction was illegitimate. Thus, reviewing the facts in the light most favorable to Drake, an issue of material fact exists as to what Drake was or was not instructed to do after the February 2004 exit inventory, and based on these instructions, whether RadioShack had a legitimate, nondiscriminatory basis for Drake's termination. Accordingly, the Court denies RadioShack's Motion for Summary Judgment as it relates to Drake's termination.

#### **IV. CONCLUSION**

The Court hereby grants in part and denies in part RadioShack's Motion for Summary Judgment. Only Drake's claims related to his 2005 termination survive summary judgment. All remaining claims are dismissed. An appropriate Order follows.

---

<sup>50</sup> *Id.* (citing Michael Aff. ¶¶ 4-7; Drake Dep. at 161:2-8). The Court notes that Michaels was later terminated for a policy violation similar to that involved in the instant matter. Def.'s Reply Mem. of Law in Further Support of its Mot. for Summ. J., at 7. This, however, does not excuse the fact that RadioShack made no investigation of Michaels in the instant matter, and terminated only Drake's employment.

<sup>51</sup> Def.'s Reply Mem. of Law in Further Support of its Mot. for Summ. J., at 1.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**WILLIAM DRAKE, II,**

**Plaintiff,**

**v.**

**RADIOSHACK CORP.,**

**Defendant.**

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**CIVIL ACTION  
No. 06-1004**

---

**ORDER**

**AND NOW**, this 20th day of April 2007, upon consideration of Defendant's Motion for Summary Judgment [Document No. 22], Plaintiff's Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment [Document No. 24], and Defendant's Reply to Plaintiff's Response to Defendant's Motion for Summary Judgment [Document No. 26], it is hereby

**ORDERED** that Defendant's Motion for Summary Judgment is **GRANTED IN PART** and **DENIED IN PART** as follows:

1. Defendant's Motion for Summary Judgment is **GRANTED** as it relates to Plaintiff's discrimination claims concerning Plaintiff's removal from District Manager Candidate School; and
2. Defendant's Motion for Summary Judgment is **DENIED** as it relates to Plaintiff's discrimination claims concerning Defendant's termination of Plaintiff's employment.

It is so **ORDERED**.

**BY THE COURT:**

**/s/ Cynthia M. Rufe**  
**CYNTHIA M. RUFÉ, J.**