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Plaintiff recalls long journey in Merrill Lynch discrimination suit

The settlement caps a long and arduous journey for lead plaintiff George McReynolds, who filed the case in 2005

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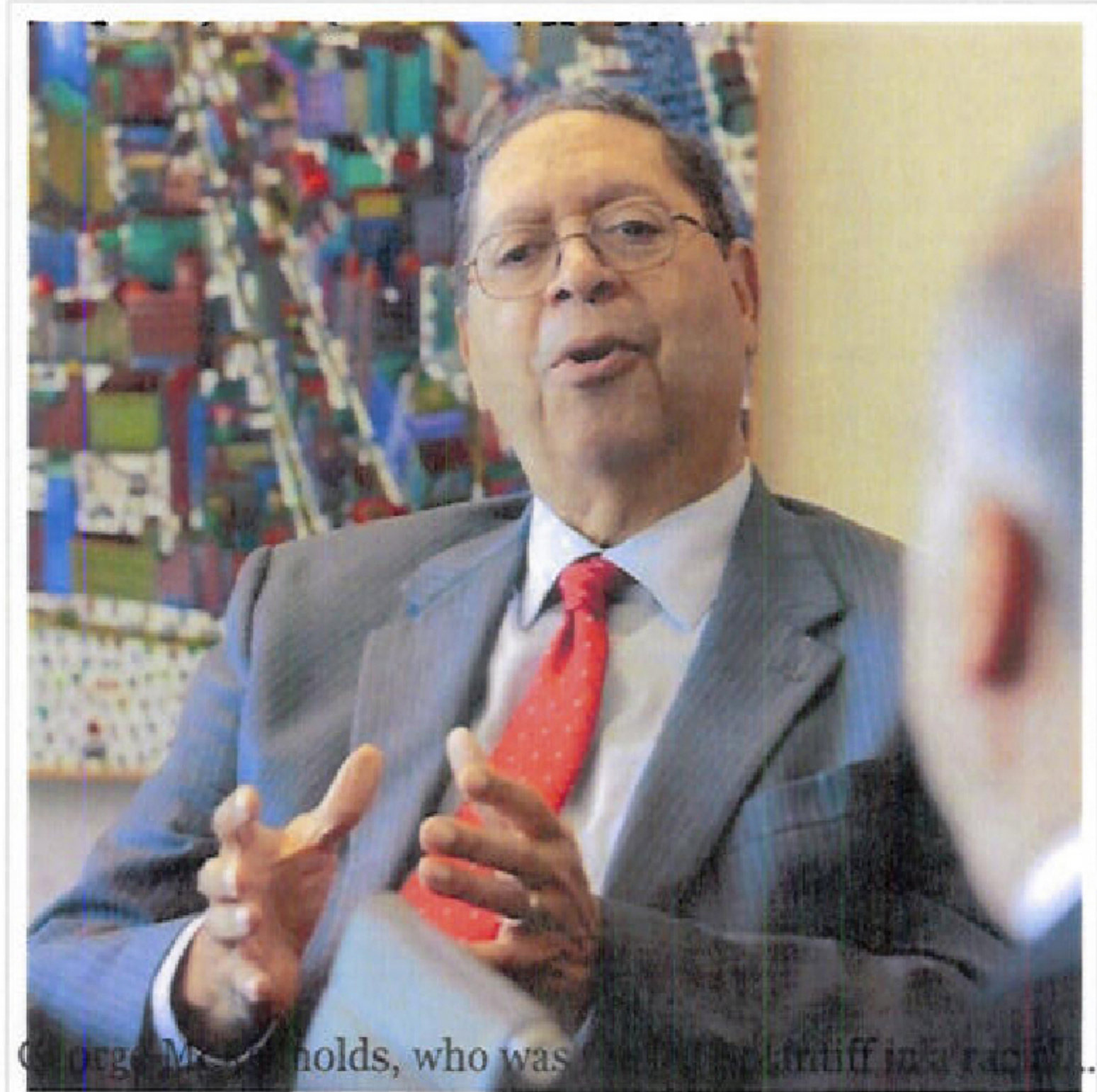
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Judge Robert Gettleman's courtroom on the 17th floor of the Dirksen U.S. Courthouse in downtown Chicago has been the source of much disappointment for George McReynolds. But on Tuesday, McReynolds walked out of the courtroom with a big smile on his face.

He was joined by several other current and former black brokers of Merrill Lynch who all had reason to celebrate. Gettleman had just told them that he planned to give his preliminary approval to a \$160 million settlement of a racial discrimination class-action lawsuit brought against Merrill Lynch, one of the biggest brokerage firms on Wall Street.



George McReynolds, who was the lead plaintiff in a racial...

Announced last week, the settlement caps a long and arduous journey for McReynolds, the lead plaintiff, who filed the case in 2005. Since then he has traveled about 30 times to Chicago from his Nashville, Tenn., home for depositions, meetings with his Chicago-based attorneys and court hearings. His wife of 43 years, Elaine, accompanied him on many of those car trips. She was by his side again holding his hand as they walked out of the courtroom.

"I can finally exhale," Elaine McReynolds said. George McReynolds, though, was a little more reserved.

"One half of an exhale," he said, noting that many more months remain before individual claims are settled and checks distributed.

Before the court hearing, McReynolds and 11 other plaintiffs who were named in the complaint met for lunch at The Berghoff restaurant less than a block from the Dirksen building. The gathering had a feeling of a family reunion. They shared hugs and photos of their kids. They passed around plates of potato pirogis and Bavarian pretzels.

"They've supported each other through so much of this," said Elaine McReynolds. "To me one of the beautiful things about this case is the brotherhood that has formed."

In the beginning McReynolds, 68, was the only name on the lawsuit. He accused Merrill Lynch, which he had joined in 1983, of having a hostile culture that allowed discrimination in hiring, advancement and pay. Among other charges, he alleged that blacks were not treated fairly when clients of departing brokers were reassigned to other financial advisers at the company.

McReynolds, who still works for Merrill, persuaded 16 other black brokers to join his suit, including Rocky Howard, Frankie Ross, Lee Brown and Marshall Miller. Their amended complaint cited some grim statistics: Merrill had black brokers in only 25 of 50 states, and 70 percent of them were in the bottom two-fifths of the company's rankings that determine the distribution of compensation and other benefits.

Of the approximately 14,000 Merrill financial advisers today, less than 2 percent are black, according to Linda Friedman, the plaintiffs' attorney, a partner at Stowell & Friedman.

Howard, 55, who joined Merrill in 1987, said black brokers were so isolated that it sometimes felt like he was "behind enemy lines" inside his own firm.

The firm denied the allegations, and the settlement includes no admission of liability.

But the statistics didn't persuade Gettleman to grant the class-action status on behalf of hundreds of current and former black brokers. After the 2011 landmark U.S. Supreme Court decision in a large sexual-bias suit against Wal-Mart, Friedman went back to Gettleman for a second try.

In the Wal-Mart opinion, a majority of justices found that if local managers were exercising discretion in hiring and promotion instead of implementing a corporate policy, a class action was improper. Friedman identified two Merrill policies that were common to a class of black brokers that allegedly put them at a disadvantage. The first was the national account distribution system, and the other was a policy of allowing brokers in the same office to form teams to better service clients.

Friedman argued that these policies caused racial bias even though the effect wasn't intentional because they favored the already successful. Gettleman again denied certification, but he did

something unusual for judges: He encouraged Friedman to challenge his decision with the 7th Circuit U.S. Court of Appeals.

A three-judge appellate panel unanimously sided with the plaintiffs last year. Merrill Lynch appealed the ruling to the Supreme Court, but the court declined to hear the case. Gettleman set a trial date for 2014 before the parties started negotiating a settlement.

"This is a very positive resolution of a lawsuit filed in 2005 and will enhance opportunities for African American financial advisors," Merrill said in a statement.

Brown, 64, who left Merrill in 2010, credited Stowell & Friedman's "legal genius" for turning things around when there was little hope. "Today is so meaningful because we've been through so much losing," he said.

Gettleman even congratulated the plaintiffs' attorneys in court. "This is a great job for what you've done for the class," he said.

asachdev@tribune.com

Twitter @ameetsachdev