



53 P.S. §39865 of the Third Class City Code. Defendants have deprived Plaintiffs of property and procedural due process by denying their opportunity to challenge the Civil Service Commission's determination in direct contravention of the protections afforded by the law.

### **JURISDICTION AND VENUE**

2. This action arises under the Constitution and law of the United States, particularly the Fourteenth Amendment to the Constitution, providing this Court with jurisdiction under 28 U.S.C. §1331.

3. This is also an action under the Federal Civil Rights Act of 1871, 42 U.S.C. §1983, to address the deprivation, under color of state law, of rights, privileges and immunities secured by the Constitution of the United States, particularly the Fourteenth Amendment. Jurisdiction, therefore, is invoked under 28 U.S.C. §1343, pursuant to which the Court may grant: a) damages or restitution for the violation of Plaintiff's Fourteenth Amendment rights; b) injunctive relief; and c) reasonable attorneys' fees, pursuant to 42 U.S.C. §1988.

4. This is also a case or actual controversy in which Plaintiffs are seeking a declaration of their rights under the Constitution of the United States. Under 28 U.S.C. §2201 and 2202, this Court may declare the rights of Plaintiffs and grant further necessary or proper relief based thereon, including, under Federal Rule of Civil Procedure 65, injunctive relief.

5. Pursuant to 28 U.S.C. §§1391(b), 1391(c) and 1392, venue is proper in this Court for the following reasons:

- a. a substantial part of the events giving rise to the claim occurred in this Judicial district;

b. Defendant, City of Williamsport, is a political subdivision of the Commonwealth of Pennsylvania and a City of the Third Class as defined by the Third Class City Code, 53 P.S. § 35101 *et seq.*;

### **PARTIES**

6. Plaintiff, Mark Webster (“Webster”), is an adult individual with an address at 1970 Pleasant Hill, Rd., Cogan Station, Pennsylvania.

7. Plaintiff, Noel Ferari (“Ferari”), is an adult individual with an address at 601 S. Market St., S. Williamsport, Pennsylvania.

8. Plaintiff, David Weaver (“Weaver”), is an adult individual with an address at 317 Valley St., S. Williamsport, Pennsylvania.

9. Defendant, City of Williamsport (“City”), is a political subdivision of the Commonwealth of Pennsylvania and a city of the Third Class as defined by the Third Class City Code, 53 P.S. § 35101 *et seq.* which maintains its business at 245 West Fourth Street, Williamsport, Pennsylvania.

10. Defendant Fire Civil Service Commission of City of Williamsport (“Commission”) is a commission governed by and operating under the City, which maintains its business at 245 West Fourth Street, Williamsport, Pennsylvania.

11. Defendant Raymond Danneker (“Danneker”) is a member of the Commission and is a party to this action in that capacity.

12. Defendant James E. Beamer (“Beamer”) is a member of the Commission and is a party to this action in that capacity.

13. Defendant Raymond Stephen H. Hertel (“Hertel”) is a member of the Commission and is a party to this action in that capacity.

**FACTS**

14. The City, as a City of the Third Class, is governed by the Third Class City Code (“Code”), 53 P.S. §35101 *et seq.*

15. Webster is a fire fighter employed by the City, and has been employed by the City for at least twenty-five years. He currently holds the civil service rank of Maintenance Engineer.

16. Ferari is a fire fighter employed by the City, and has been employed by the City for at least sixteen years. He currently holds the civil service rank of Maintenance Engineer.

17. Weaver is a fire fighter employed by the City, and has been employed by the City for at least fifteen years. He currently holds the civil service rank of Maintenance Engineer.

18. On April 21, 2011, the Secretary for the Commission posted notice of a “Platoon Chief Promotional Examination” to be administered on May 5, 2011. (A true and correct copy of the posting is attached hereto as Exhibit 1.)

19. Promotion from the rank of Maintenance Engineer to Platoon Chief would result in, among other emoluments of employment, an increase in salary as well as pension credits.

20. Pursuant to the requirements contained in the April 21, 2011 memorandum, Defendants Webster, Ferari and Weaver submitted timely written notice to the Commission’s Secretary of their interest in taking the promotional examination.

21. On May 4, 2011, Defendants Webster, Ferari and Weaver were contact by telephone by representatives of the Commission informing them that they were prohibited from participating in the examination because of their alleged failure to hold required certifications.

22. Pursuant to the rules and regulations of the Commission, Webster submitted a written appeal of the Commission's refusal to permit him to take the May 5, 2011 promotional examination.

(A true and correct copy of Webster's May 7, 2011 appeal letter is attached hereto as Exhibit 2.)

23. By correspondence dated June 6, 2011, the Commission informed Webster that it "unanimously voted with the opinion of the city solicitor to deny your request for a hearing." (A true and correct copy of the Commission's June 6, 2011 correspondence is attached hereto as Exhibit 3.)

24. On June 28, 2011, Weaver submitted a similar written appeal to the Commission. In his appeal, Weaver requested an opportunity to "meet with the Fire Service Board to discuss the recent Platoon Chief Promotional Examination given on May 5, 2001." (A true and correct copy of Weaver's June 28, 2011 appeal letter is attached hereto as Exhibit 4.)

25. The Commission denied Weaver's appeal and request for hearing. (Said denial, and reference to its prior denial letter issued to Webster, is noted on Exhibit 4.)

26. On July 8, 2011, Ferari filed a similar written appeal to the Commission and requested a hearing. (A true and correct copy of Ferari's July 8, 2011 appeal letter is attached hereto as Exhibit 5.)

27. The Commission denied Ferari's appeal and request for hearing. (Similar to its denial of Weaver's appeal, the Commission noted its denial on the appeal letter itself (Exhibit 5), and referenced its prior denial letter issued to Webster (Exhibit3.))

28. Section 53 P.S. 39865 of the Third Class City Code governs the procedures for civil service promotional examinations. It states, in relevant part:

If any applicant feels himself aggrieved by the action of the commission in refusing to examine him, or, after an examination, to certify him as eligible, as provided in this section, the commission shall, at the request of such applicant, appoint a time and place for a public hearing, at which time the applicant may appear, by himself or

counsel, or both, and the commission shall then review its refusal to make such examination or certification, and testimony shall be taken.

29. By letter dated August 8, 2011, Thomas W. Jennings, Esquire, advised the Commission of its obligation by mandate of the Third Class City to provide Mr. Webster with a public hearing concerning its refusal to examine him. Given the Commission's apparent prejudgment on the issue, Mr. Jennings requested the appointment of a mutually selected neutral master to administer the hearing. The Commission was placed on notice that its failure to respond to the correspondence within one business week from the issuance of the correspondence would result in the initiation of a suit compelling such a hearing. (A true and correct copy of the August 8, 2011 correspondence is attached hereto as Exhibit 6.)

30. The Defendants have not responded to the August 8, 2011 correspondence.

31. The Defendants have failed and refused to afford the Plaintiffs the requested public hearing.

32. Without the participation of a neutral intermediary, Plaintiffs cannot receive a fair and impartial hearing by Defendants, who have already reached a determination adverse to Plaintiffs in the absence of a hearing.

#### **CLAIMS FOR RELIEF**

##### **(Violation of 42 U.S.C. §1983 and the United States Constitution)**

33. Plaintiffs incorporate paragraphs 1 through 32 by reference as if set forth in full.

34. The Fourteenth Amendment provides that "[n]o state shall...deprive any person of...property, without due process of law." U.S. Constitution Amendment XIV, §1.

35. The essential principle of procedural due process is that a deprivation of property should be preceded by “notice and opportunity for a hearing appropriate to the nature of the case.” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S.Ct. 1487 (1985).

36. Plaintiffs have a legitimate property interest in their civil service promotion as guaranteed them under the Fourteenth Amendment.

37. The acts Defendants have undertaken have and will continue to deprive Plaintiffs.

38. Accordingly, Plaintiffs have been deprived of any meaningful opportunity to be heard.

39. Defendants have failed to comply with the Fourteenth Amendment to the United States Constitution.

40. Defendants have failed to comply with 53 P.S. §39865 of the Third Class City Code.

41. Said acts by Defendants have caused, and, unless enjoined, will continue to cause immediate, substantial and irreparable harm to Plaintiffs, the amount of which cannot be immediately ascertained, in that Plaintiffs Constitutional rights have been and will be violated, they will suffer significant losses of income, and Defendants’ acts have caused Plaintiffs emotional distress.

42. Plaintiffs have no adequate remedy at law.

43. As to each item of relief requested, greater injury will be inflicted upon Plaintiffs by the denial of relief than will be inflicted upon Defendants by the granting of relief.

**PRAYER FOR RELIEF**

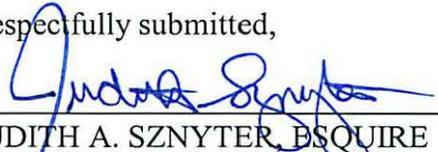
WHEREFORE, Plaintiffs hereby respectfully request that this Court:

A. Issue a special injunction and permanent injunction, enjoining and restraining Defendants, their agents, employees and all others conspiring, acting in concert, or otherwise participating with them or acting in their aid or behalf from prohibiting

Plaintiffs from making any civil service promotion to the position of Platoon Chief until such time that Plaintiffs have been afforded a public hearing to address the Commission's refusal to allow them to take the civil service examination for this position;

- B. Order Defendants to hold a public hearing for Plaintiffs pursuant to 53 P.S. §39865 of the Third Class City Code;
- C. Order Defendants to appoint a special master mutually selected by the parties to adjudicate the proceeding to ensure impartiality and fairness;
- D. Award Plaintiffs damages for emotional distress and any other injuries caused by Defendants' acts;
- E. Award Plaintiffs reasonable attorneys' fees and costs, pursuant to the Civil Rights Attorneys' Fees Award Act of 1976, 42 U.S.C. §1988;
- F. Grant such other relief as may be deemed necessary and proper.

Respectfully submitted,

  
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Attorney I.D. No. 91135  
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Attorney for Plaintiff

Dated: August 29, 2011

\*Application for Pro Hac Admission of MARC GELMAN shall be made at the appropriate time