

SUMMONS ISSUED

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

CV 14 - 4141

NADYA BUTTIGIEG,

Plaintiff,

COMPLAINT

-against-

MATSUMOTO, J.

PLAINTIFF DEMANDS  
TRIAL BY JURY

THE CITY OF NEW YORK and THE NEW  
YORK CITY FIRE DEPARTMENT

SCANLON, M.J.

Defendants.

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FILED  
CLERK  
2014 JUL -3 PM 3:41  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

Plaintiff, Nadya Buttigieg (“Buttigieg” or “Plaintiff”), through her attorneys, Ritz Clark & Ben-Asher LLP, complains of defendants The City of New York (“New York City”) and The New York City Fire Department (“FDNY”) (collectively “Defendants”), as follows:

NATURE OF ACTION

1. This action arises out of Defendants’ discriminatory refusal to hire Plaintiff as an Emergency Medical Specialist - Paramedic, even though she had passed all of the prerequisite examinations and met all of the posted requirements. Defendants unlawfully assumed, without any basis, that Plaintiff could not perform the job because she has a left eye prosthetic. Despite Plaintiff having provided Defendants with proof that she had successfully served as a Paramedic and ambulance driver for over a year, and a report from her treating ophthalmologist attesting that she was fully able to perform as a Paramedic, including driving an ambulance, Defendants persisted in denying her the position. Today, Plaintiff is employed as an EMT by Northshore LIJ Hospital System. Upon completion of her training period in July 2014, she will be assigned to respond to 911 calls, working alongside, and under the ultimate supervision of, FDNY, in Forest Hills, New York. The ambulance she will be driving will say FDNY 911 on the side. In addi-

tion, Plaintiff Buttigieg will be working for Northshore LIJ assigned to LaGuardia Airport, where she will also be taking 911 calls. In connection with her employment with Northshore LIJ, Plaintiff has a New York City 911 EMS shield.

2. Plaintiff brings this action under The Rehabilitation Act of 1973, as amended, 29 U.S.C. §701 *et seq.* (“The Rehabilitation Act”); the New York State Human Rights Law, N.Y. Executive Law §290 *et seq.* (“NYS HRL”); and the New York City Human Rights Law, NYC Admin. Code §8-101 *et seq.* (“NYC HRL”).

3. Plaintiff seeks declaratory and injunctive relief, including without limitation, immediate employment by Defendants as an Emergency Medical Specialist - Paramedic, with full retroactive seniority, salary and benefits, together with compensatory damages; lost wages and benefits; costs; attorneys’ fees; and all other appropriate legal and equitable relief.

#### JURISDICTION AND VENUE

4. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§1331, 1343 (a) (4), 2201 and 2202, 29 U.S.C §794a, and 42 U.S.C. §2000e-5. Jurisdiction over the state and local claims is invoked pursuant to 28 U.S.C. §1367 and this Court’s pendent jurisdiction.

5. Venue is found in the Eastern District of New York pursuant to 42 U.S.C. §2000e-5(f)(3), which provides venue under The Rehabilitation Act, because some of the unlawful practices complained of herein occurred in Brooklyn; on information and belief, the Defendants’ records for Plaintiff are maintained at Defendants’ headquarters in Brooklyn; and, on information and belief, the Eastern District is one of the judicial districts in which Plaintiff would have worked but for the unlawful employment practices of Defendants.

### PARTIES

6. Plaintiff Nadya Buttigieg currently resides in Queens, New York. As more fully described *infra*, Plaintiff is an individual with a disability, within the meaning of The Rehabilitation Act, the NYS HRL and the NYC HRL.

7. Defendant New York City maintains a Fire Department (Defendant FDNY) with responsibility for serving as first responders to fires, public safety and medical emergencies, disasters and terrorist acts. According to FDNY's website, it currently has 3,529 EMTs, Paramedics and EMS Officers. Defendants are the employers of such EMT's, Paramedics and EMS Officers, within the meaning of The Rehabilitation Act, the NYS HRL and the NYC HRL.

8. On information and belief, Defendants receive federal funds.

### FACTS

9. In 1995, Plaintiff Buttigieg lost her left eye due to a vicious stabbing incident. With the help of excellent medical treatment, she recovered from the attack, received an artificial left eye and re-developed her visual acuity. Plaintiff has 20/20 vision in her right eye, and has made an excellent adaptation, including without limitation, developing the depth perception required for driving and performing all the functions of a Paramedic. However, she has no vision in her left eye.

10. For most of her adult life, Plaintiff Buttigieg dreamed of working as a FDNY Paramedic.

11. In or about 2007, Plaintiff Buttigieg earned her EMT degree, and in or about August 2009, Plaintiff Buttigieg earned her Paramedic degree.

12. After graduation from Paramedic school, Plaintiff Buttigieg worked in an emergency room as a Paramedic for approximately 9 months and thereafter, became a Paramedic for both

public and private ambulance services. Her work for the ambulance services involved extensive driving of ambulances in all kinds of traffic and weather conditions. She never had an accident.

13. In or about September 2009, Plaintiff Buttigieg began the process of applying to become a Paramedic for Defendants by submitting her EMT and Paramedic certificates to Defendants.

14. Also in or about September 2009, Plaintiff received her New York State Paramedic certification.

15. Thereafter, Plaintiff applied to take the REMAC (Regional Emergency Medical Advisory Committee) Exam. At that time, the REMAC exam consists of a written component, comprised of approximately 150 questions, and an oral component, administered by a medical doctor who questions the applicant on three hypothetical situations.

16. On information and belief, Paramedics trained outside of New York State have a 95% failure rate on their first attempt of the REMAC Exam.

17. In or about July 2010, Plaintiff Buttigieg took the written component of the REMAC exam and, five days later, took the oral component. She passed both on her first try.

18. Upon being informed by Defendant FDNY that in order to become a Paramedic for Defendants she needed to file to take the Civil Service exam, Plaintiff took and passed the exam in January 2011. She was ranked number 147.

19. In or about the Summer of 2011, Plaintiff took and passed FDNY's Candidate Physical Ability Test ("CPAT"). She was so physically fit and so excelled at the test that the test administrator told her he could not wait to get her into the FDNY training academy.

20. After passing the CPAT, Plaintiff Buttigieg was informed that her Civil Service number had risen to the 60's and that she should plan to be starting in the FDNY Academy in July.

21. In or about July 2011, plaintiff presented at FDNY's headquarters for the psychological and physical examinations. On information and belief, these were the final steps in Plaintiff's application to enter the FDNY training academy.

22. On information and belief, Plaintiff passed the psychological exam.

23. On or after July 18, 2011, Defendants issued to Plaintiff a single page letter dated July 18, 2011 denying her application to become a Paramedic ("July 18 Denial Letter"). The letter stated, in relevant part, that "the Fire Department has found you NOT QUALIFIED for the following reasons: Medical: Left Eye Prosthetic."

24. Plaintiff Buttigieg was crushed. At the time of the July 18, 2011 Denial Letter, she had been successfully serving as an ambulance Paramedic, including regularly driving an ambulance, for over a year, without any incidents related to her eyesight.

25. In accordance with the instructions in the July 18, 2011 Denial Letter, Plaintiff Buttigieg appealed the decision to the Civil Service Commission and thereafter re-appealed. The information she provided to Defendants included, without limitation:

- a. A letter from Dr. Robert M. Dryden, who is board certified by the American Board of Cosmetic Surgery in general cosmetic surgery and by the American Board of Ophthalmology. In his letter, Dr. Dryden stated, in relevant part, that he had treated plaintiff Buttigieg since January 31, 2006, and that "Although she is now a one eyed individual, she has excellent visual acuity of 20/20 in the remaining eye. She has adapted remarkably as a one eyed individual and can function well doing anything that she would need to do as a paramedic. Her depth perception is adequate due to her excellent adaptation. Driving has not been a problem

for her to do [sic] this adaptation, and she is fully able to perform as a paramedic.”

- b. A letter from Captain Melissa Phillips, stating, among other things, that she had worked with Plaintiff Buttigieg, and that, “I have worked with Nadya for the the [sic] past year in the City of Casa Grande. Our fire department runs with the private ambulance company where Nadya is employed. In this time I have had the opportunity to get to know Nadya personally and professionally. I am not only impressed with her tremendous skill base, but her unwavering positive attitude and love for the profession. At all hours of the day and night we have responded to calls with Nadya and her partner. I would have never guessed she had the inability to see out of one of her eyes, and I may have never known that had she not told me about it. I have been the passenger of vehicles while Nadya is driving, including Phoenix rush hour traffic and longer trips at night. I have never witnessed anything that would indicate to me that she was having any problem navigating traffic, distances or peripheral obstacles. I have seen her in situations that required keen eyesight with longer distances as well as up-close intricate tasks. I have no doubt in Nadya’s ability to perform the job requirements, well above standards, and I hope she is given the opportunity to prove what a tremendous asset she is to the EMS field;” and
- c. A letter from Plaintiff Buttigieg in which she stated, in relevant part, “I can accomplish all tasks with the same proficiency as a Paramedic with

full vision. My Paramedic skills are well above average, my driving skills are at the same level. I have *no* restrictions on my drivers license. I have my mirrors adjusted to the correct angle, and when looking left, the only difference between myself and those with peripheral vision in both eyes, is that I turn my head to the left a little more to get the same full field of vision as those with bilateral vision. I grew up in New York City and am extremely comfortable driving in very heavy traffic areas, and having to react quickly and have all angles of vision covered...My body has completely adjusted to this ailment, I can perform ALL my job duties required for FDNY EMS....”

26. On information and belief, defendants made no further inquiries into Plaintiff Buttigieg’s medical condition, did not contact her treating physician or references, and made no individualized inquiry into whether Plaintiff Buttigieg’s abilities disqualified her from working as a Paramedic.

27. On or about September 23, 2011 the Defendants, through FDNY’s Chief Medical Officer, issued a so-called Analysis in which they maintained, without any supporting evidence, that “the inability to see out of both eyes and inability to have peripheral vision due to loss of her eye makes her unqualified....”

28. On or about July 12, 2012, Defendants, through the Civil Service Commission, denied Plaintiff Buttigieg’s appeal and, on or about March 1, 2013, Defendants, through the Civil Service Commission, denied Plaintiff’s request to reopen her appeal or amend the decision.

29. On information and belief, at the time Plaintiff Buttigieg applied to serve as a Paramedic for Defendants, defendant FDNY maintained on its website the following statement regarding Paramedic Requirements:

- Be at least 18 years of age
- A valid NYS DOH EMS-Paramedic Certificate
- High School Diploma or equivalent
- A motor vehicle driver's license valid in NY State (Does not require a NYS Driver's license; a valid driver's license from another state is OK so long as you have not lost driving privileged in NYS (For example, due to outstanding fines or judgments, etc.)

30. In July 2011, Plaintiff met each and every one of the above-stated requirements.

31. As of July 1, 2014, Defendant FDNY's website maintains approximately the same requirements as existed in 2011, with the additional requirement that the applicant have a New York City REMAC certification.

32. Plaintiff Buttigieg has, at all times relevant herein, had, and still has, a valid REMAC certification.

33. Plaintiff has and, at all times relevant herein has had, a New York driver's license with no restrictions on it.

34. As of July 1, 2014, Plaintiff Buttigieg meets all of the listed requirements for becoming a Paramedic listed on Defendant FDNY's website.

35. At all times relevant herein, Plaintiff could, and continues to be able to, perform all the essential functions of the Paramedic position with or without a reasonable accommodation.



36. At all times relevant herein, Plaintiff could, and continues to be able to, perform the activities of the Paramedic job in a reasonable manner with or without reasonable accommodations.

37. At all times relevant herein, Plaintiff was able, and continues to be able to, satisfy the essential requisites of the Paramedic job with or without a reasonable accommodation.

38. Since her rejection by Defendants, Plaintiff has passed the Emergency Vehicle Operator Course (“EVOC”) test, including the component that requires driving an obstacle course.

39. Since her rejection by Defendants, Plaintiff has been employed by several private ambulance companies, where her regular duties have included driving an ambulance in rush hour traffic on emergency calls with lights and sirens, including in Yonkers, Manhattan, the Bronx, Queens and Long Island. She has never had an accident.

40. Plaintiff is currently employed as an EMT by NorthShore LIJ and will soon be driving an ambulance that says, on the side, FDNY 911. She has been given a New York City 911 EMA shield in connection with this job.

41. Defendants’ discriminatory rejection of Plaintiff has caused her enormous pain, suffering and anguish, including causing her to re-experience the anger and frustration of the attack that rendered her blind in her left eye.

42. Plaintiff has suffered significant loss of income and benefits as a result of Defendants’ discriminatorily denying her to the job as a Paramedic.

FIRST CAUSE OF ACTION  
(Rehabilitation Act)

43. Plaintiff repeats and re-alleges each and every allegation contained in this complaint with the same force and effect as if set forth herein.

44. On information and belief, Defendants receive federal funds.

45. At all times relevant herein, Plaintiff has been a person with a handicap, as that term is defined in The Rehabilitation Act.

46. In violation of The Rehabilitation Act, Defendants have discriminated against Plaintiff on the basis of her handicap and/or perceived handicap by refusing to employ her.

47. As a result of Defendants' unlawful acts, Plaintiff has suffered irreparable injury, emotional distress and humiliation, mental anguish, stress, and other compensable damage and will continue to do so unless and until this Court grants relief.

SECOND CAUSE OF ACTION  
(New York State Human Rights Law)

48. Plaintiff repeats and re-alleges each and every allegation contained in this complaint with the same force and effect as if set forth herein.

49. At all times relevant herein, Plaintiff has had a disability as that term is defined in the New York State Human Rights Law.

50. In violation of The New York State Human Rights Law, Defendants have discriminated against Plaintiff on the basis of her disability and/or perceived disability by refusing to employ her.

51. As a result of Defendants' unlawful acts, Plaintiff has suffered irreparable injury, emotional distress and humiliation, mental anguish, stress, and other compensable damage and will continue to do so unless and until this Court grants relief.

THIRD CAUSE OF ACTION  
(New York City Human Rights Law)

52. Plaintiff repeats and re-alleges each and every allegation contained in this complaint with the same force and effect as if set forth herein.

53. At all times relevant herein, Plaintiff has had a disability as that term is defined in the New York City Human Rights Law.

54. In violation of The New York City Human Rights Law, Defendants have discriminated against Plaintiff on the basis of her disability and/or perceived disability by refusing to employ her.

55. As a result of Defendants' unlawful acts, Plaintiff has suffered irreparable injury, emotional distress and humiliation, mental anguish, stress, and other compensable damage and will continue to do so unless and until this Court grants relief.

56. A copy of the original complaint with jury demand will be served on the New York City Commission on Human Rights and the Corporation Counsel.

#### RELIEF

WHEREFORE, plaintiff respectfully requests that this Court enter a Judgment:

A. Declaring the acts and practices complained of herein to be violations of The Rehabilitation Act, the New York State Human Rights Law, and the New York City Human Rights Law;

B. Enjoining and permanently restraining these violations of the The Rehabilitation Act, The New York State Human Rights Law and the New York City Human Rights Law;

C. Directing Defendants to take such affirmative steps as are necessary to ensure that the effects of these unlawful practices are eliminated and do not continue to affect Plaintiff's employment opportunities, including, without limitation, immediately hiring Plaintiff as a Paramedic

with full retroactive seniority, salary and benefits, together with compensatory damages; lost wages and benefits;

D. Directing Defendants to pay Plaintiff compensatory damages, including damages for lost income and benefits, and for emotional distress and humiliation, under The Rehabilitation Act, the New York State Human Rights Law and the New York City Human Rights Law;

E. Awarding Plaintiff the costs of this action, together with reasonable attorneys' fees, as provided by The Rehabilitation Act and the New York City Human Rights Law; and

F. Granting such other and further relief as this Court deems necessary and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiff hereby demands a trial by jury in this action.

Dated: New York, NY  
July 3, 2014

Yours, etc.

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By: 

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