

CV 14 4982

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

BARAKA SMITH,

AZRACK, M.J.

Docket No.

Plaintiffs,

- against -

COMPLAINT

THE CITY OF NEW YORK,
FIRE COMMISSIONER DANIEL NIGRO
(In his Official Capacity), SALVATORE
CORALLO (individually), PATRICK
MULLANY (individually),

Jury Trial Demand

Defendants.

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Plaintiff, BARAKA SMITH, by his undersigned counsel alleges as

follows:

Introduction

1. This is an action to remedy violations of the rights of BARAKA SMITH, pursuant to Title VII, 42 USCA § 2000e; (5) (f) and under 28 USCA §§ 1331 AND 1343 (4), (Sex Discrimination in violation of the Civil Rights Act of 1964 (Hostile Work Environment); and Race Discrimination under the Civil Rights Act of 1866 and 1964 (disparate - Race Discrimination) as well as: several State Court statutes to wit: failure to train and negligent supervision of unfit employees,

negligent infliction of emotional distress, failure to follow policy and guidelines of the City of New York with regard to “hazing” and false arrest, false imprisonment and malicious prosecution.

Jurisdiction and Venue

2. Jurisdiction of this Court is invoked pursuant to Title VII, 42 USCA § 2000e-(5) (f), 28 USCA §§ 1331 AND 1343(a), and the Civil Rights Act of 1866 (as against Plaintiff’s race and 1964), which gives this Court jurisdiction for each statute; the damages, exclusive of interest and costs in this instance are in excess of fifty thousand dollars, and this Court’s pendent jurisdiction is also invoked.

3. The unlawful employment practices alleged herein were committed, wholly or in part, in the jurisdiction of the Eastern District of New York (Brooklyn, New York).

Parties

4. Plaintiff, BARAKA SMITH, is a male African-American citizen of the United States and resides in the County of Kings in Brooklyn, at 642 East 53rd Street, Brooklyn, N.Y. 11203. He has been employed by the City of New York as a firefighter for over the past 12 years.

5. Defendant, CITY OF NEW YORK, is a municipal corporation incorporated in this state, and resides in all five boroughs. The causes of action in

this particular case have all taken place in Brooklyn, New York. The Fire Department for the City Headquarters are in Brooklyn, New York, and has its relevant place of business at 9 Metro Tech Center, Brooklyn, N. Y. 11201, although several firehouses are located throughout the City of New York. MR. SALVATORE CORALLO and MR. PATRICK MULLANY are both fire workers with the with the City, and are still on the job.

6. At all relevant times herein, defendant CITY OF NEW YORK was an employer of plaintiff within the meaning of 42 U.S.C.A. § 2000 e, *et seq.*

Facts

7. Plaintiff is a firefighter for the City of New York. He is currently on “medical leave” as a result of the May 25, 2013 incident which triggered this lawsuit. On May 25, 2013, Plaintiff reported for active duty to Ladder 107, Battalion 39 located at 799 Lincoln Avenue, Brooklyn, N. Y.

8. May 25, 2013, would have been Plaintiff’s first day at this particular fire station. He had come bearing traditional firehouse gifts (cake and pies). He was greeted by firefighter, PATRICK MULLANY, who said “Hey Sugar”. Later as Plaintiff was changing his clothes in the locker room, two firefighters grabbed plaintiff from behind and simulated anal sexual intercourse while forcibly holding him down, and uttered words like “I like this brown sugar” Defendant CORALLO

actually touched Plaintiff by digitly touching Plaintiff's anus and penis/testicles.

9. Plaintiff is a straight married male. The other two firefighters are white males. The actions of Defendants CITY OF NEW YORK, SALVATORE CORALLO and PATRICK MULLANY were totally inappropriate, criminal and against Fire Department Regulations against hazing, sexual misconduct, and EEO regulations.

10. As a result of this assault, firefighter SMITH defended himself. Defendant CORALLO, reported the incident to the Battalion Chief Johnson, who was on duty that Plaintiff had "choked him". Defendant CORALLO did not go to the hospital and both he and Plaintiff went on an emergency response after the incident. Several hours later, he reported the fight to the police. Plaintiff explained what happened to Battalion Chief Johnson.

11. Plaintiff was arrested at home in front of his family, and is still awaiting deposition of his case. Meanwhile Plaintiff has had emotional injuries as a result of Defendants' actions and inactions which have caused him to be on modified duty and not able to receive his full pay (overtime), or any promotions, in that Plaintiff is awaiting promotion from the Lieutenant's List; a position he cannot assume when it becomes available. Since he is still on "medical leave", this aspect has compounded the emotional and substantial financial losses he has already

endured as a result this hazing/sexual attack, and the criminal court prosecution.

12. In addition to emotional injuries, Plaintiff has lost the monies he would have made in his regular position, as well as overtime, not to mention the shame of this incident which has caused his marriage to suffer, and the revocation of his Certified First Responder status and several other licenses and permits. Plaintiff has also had to pay counsel for the defense of his criminal case as well as the costs of this action and counsel fees.

13. Plaintiff has sought to file a criminal complaint against Defendant CORALLO, but the police and the Kings County District Attorney's Office have foreclosed him from doing so. Plaintiff also attempted to file a complaint with the New York City Human Rights Commission who also refused to file a claim on his behalf because of the pendency of the criminal court case (which is contrary to fire department rules and regulations). The HRC has also refused to issue Plaintiff a Right to Sue Letter each time Plaintiff has asked.

14. Last, but not least, as a result of Plaintiff having to go to Criminal Court on this charge, Plaintiff has been injured emotionally and publicly humiliated to the extent that he has been falsely arrested, falsely imprisoned and maliciously prosecuted.¹

¹Currently the case is on tract for dismissal in December 2014.

15. Defendant CITY OF NEW YORK has not followed its own guidelines with regard to hazing and affirmative action policies, and are in violation of *Monell*.

16. See, Fire Department Equal Employment Opportunity Regs 2.3; §3.2, §3.3, §5.3.

17. Plaintiff reported said incident on the day of the incident to Battalion Chief Johnson, who was on duty (§6.1). No one informed Plaintiff of his EEO responsibilities, or duties.

18. The Fire Department has not confronted Plaintiff's complaint and as a result are in violation of the Command Discipline Policy and Procedures (see §2.2.18).

19. PATRICK MULLANY was never placed on administrative leave by the Fire Department even though Plaintiff reported him to the Battalion Chief.

Procedural Requirements

20. Plaintiff has satisfied all procedural requirements prior to commencing this action. Plaintiff has asked the New York City Human Rights Commission (12/18/13) to file a complaint for violation of Civil Rights or in the alternative Plaintiff receive a Right to Sue Letter at the New York City Human rights Commission. In each instance, New York City Human Resources

Commission has refused to allow Plaintiff to file a human rights complaint, or to send him a Right to Sue Letter. As per Aarti Gargh, Esq., a lawyer in the Human Rights Commission's office, Plaintiff also filed a Notice of Claim.

FIRST CAUSE OF ACTION

DISCRIMINATION BASED ON § 1981 OF
THE CIVIL RIGHTS ACT OF 1866.
(RACIAL DISCRIMINATION, DISPARATE TREATMENT

21. Plaintiff hereby repeats and realleges each allegation contained in Paragraphs 1 - 20, as if fully set forth.

22. Plaintiff is an African-American male citizen of the United States, living in Brooklyn, New York. He was arrested for defending himself against a sexual assault, an outrageous form of hazing from Defendants PATRICK MULLANY and SALVATORE CORALLO. Defendant CORALLO is a white male firefighter, who sexually assaulted Plaintiff on the first day of his arrival to Ladder 107, Battalion 39 on May 25, 2014. Defendant PATRICK MULLANY is a white male firefighter, who also participated in sexually assaulting Plaintiff, on the same date as part of the same incident. DANIEL NIGRO is the present Fire Commissioner and is being named in his official capacity.

23. On that date, it appears Defendant CORALLO told his Battalion Chief he was in a fight, but failed to tell the chief exactly what had transpired.

Plaintiff who is an African-American male, was called to the Chief's office, where he explained what had transpired. Nothing was done. Plaintiff was not allowed to make a complaint, and Defendant CORALLO reported said matter to the police. Defendant MULLANY was never approached by Fire Department "brass". As a result, Plaintiff was arrested and said matter has been pending in criminal court, Kings County. Plaintiff was treated differently because of his race. As a result, said behavior is actionable under the Civil Rights Act of 1866.

24. By engaging in the foregoing conduct Defendant CITY OF NEW YORK has violated Plaintiff's rights under the Civil Rights Act of 1866.

25. By acting as described above Defendant CITY OF NEW YORK acted with malice or reckless disregard for Plaintiff's rights causing Plaintiff monetary and emotional injuries and entitling Plaintiff to damages in the amount of \$750,000.00.

SECOND CAUSE OF ACTION

TITLE VII, 42 USCA § 2000e (5f), 28USCA §§ 1331
AND 1343(a), SEXUAL DISCRIMINATION
IN VIOLATION OF THE CIVIL RIGHTS
ACT OF 1964 (HOSTILE WORK ENVIRONMENT

26. Plaintiff hereby repeats and realleges each allegation contained in Paragraphs 1-24, as if fully set forth herein.

27. Plaintiff and Defendant CORALLO are employees employed by the City of New York (Fire Department). The City has several policies to wit: Hazing Prohibition (Supplement No. 37 to Department Order No. 34 (May 15, 2013)). Said policies prevent hazing (2.2.3). In this instance Battalion Chief Johnson was made aware of the incident. He is a manager and is aware of the policies of the department, as was the then Commissioner, Casano.

In particular the City came up with an up to date of said policy.² Battalion Chief Johnson did nothing and did not report as he was supposed to do under the Fire Department Hazing Policy (8/13/13) caused an additional violation of the City Department under §3.2 which require these items to be reported. As of this filing, no one has reported this incident as required by PA/ID -1-2-2013, EMS OGP 113-11 (§ 3.2). Hazing Policy.

28. In addition to Plaintiff being out right hazed. Defendants' conduct (CITY OF NEW YORK, Defendants CORALLO and MULLANY created a Hostile Work environment which caused Plaintiff to be injured, both emotionally and monetary damages.

29. By acting as described above Defendant CITY OF NEW YORK has violated Plaintiff's rights under Title VII and the policies of the New York Fire

²See Hazing policy of August 13, 2013.

Department, as well as the City of New York.

30. By acting as described, Defendants' have acted with malice or reckless disregard for Plaintiff's rights and safety causing him both monetary and emotional injuries (post-traumatic stress syndrome), costs of said litigation in the amount of \$1.5 million dollars.

THIRD CAUSE OF ACTION

FAILURE TO ADEQUATELY TRAIN AND SUPERVISE AS AGAINST THE CITY OF NEW YORK

31. Plaintiff hereby repeats and realleges each allegation contained in Paragraphs 1 - 30, as if fully set forth herein.

32. The City of New York has had a Human Rights Commission as well as statutes which discuss policies which established rules and the rights of its citizens and workers as well as common law rights. In this instance, Plaintiff alleges that Defendant CITY OF NEW YORK was negligent in its training of its managers and employees in that they knew or should have known about its rules on "hazing". In particular, the then Fire Commissioner Cassano , was involved in several lawsuits which resulted in a reiteration on the policy of hazing or affirmative action consequences.

In this action, Battalion Chief Johnson's failure to direct Plaintiff to

EEO or do something about the incident after Plaintiff told him about it, caused a problem as he was not in compliance with EEO policies of the Fire Department or City of New York.

Furthermore Defendant CORALLO and MULLANY were still hazing new firemen, even though they knew or should have known this was “*per se*” hazing, and were impermissible under Fire Department Rules and Regulations.

33. Defendant CITY OF NEW YORK violated its own policy, and as a result violated *Monell v. City of New York*.

34. Battalion Chief Johnson was a person who would be charged in effectively carrying out policy regarding affirmative action and training and retraining subordinates.

35. As a result of Defendant CITY OF NEW YORK’s negligence in failing to train and supervise its employees, Plaintiff has suffered and continues to suffer substantial losses including the lost of past and future earnings, overtime, promotion, deferred compensation and other employee benefits, as well as loss of consortium.

36. As a proximate result of Defendant CITY OF NEW YORK’s and the former Fire Commissioner’s failure to train and supervise CORALLO and MULLANY, Plaintiff has suffered and continues to suffer impairment and damages

to Plaintiff's good name.

37. The conduct of Defendant CITY OF NEW YORK was outrageous and malicious and as a result was done with reckless indifference to Plaintiff protected civil rights to an award of punitive damages.

38. Thus because of Defendant CITY OF NEW YORK's negligence, Plaintiff is entitled to an award of \$250,000.00.

FOURTH CAUSE OF ACTION

DEFENDANTS CORALLO, MULLANY, DEFENDANT CITY OF NEW YORK's AND FIRE COMMISSIONER NIGRO's NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS

39. Plaintiff hereby repeats and realleges each allegation contained in Paragraphs 1-37 as if fully set forth.

40. Defendant CORALLO and MULLANY's hazing and Defendant's CITY OF NEW YORK's failure to enforce its own rules and regulations, have resulted in extreme and outrageous conduct to Plaintiff and as a result has caused Plaintiff to develop post-traumatic stress syndrom injury, as the proximate cause of Defendants' actions; as a result of Defendants' behavior Plaintiff has been severely injured and entitled to an award of \$500,000.00.

FIFTH CAUSE OF ACTION³

INTENTIONAL TORTS OF FALSE IMPRISONMENT,
FALSE ARREST, MALICIOUS PROSECUTION AND
LOSS OF CONSORTIUM
AGAINST THE CITY AND ALL DEFENDANTS

41. Plaintiff hereby repeats and realleges each allegation contained in Paragraphs 1-40 as if fully set forth herein.

42. Plaintiff's criminal case is on tract for dismissal in Criminal Court, is has been inactive since Plaintiff's arrest.

43. I am told by Plaintiff's Criminal Defense Attorney it should be outright dismissed by December 2014, beyond a timely period for Plaintiff to sue. Whether the causes of actions will be stayed or can be plead at a later time, Plaintiff chooses to plead them now, just in case there isn't a tolling provision.

44. As a result of Defendants' behavior as previously described, Plaintiff has been injured as the proximate result of Defendants' intentional behavior and has continued to suffer substantial losses including impairment and damage to Plaintiff's good name and reputation.

45. The conduct of Defendants was outrageous and malicious and was

³Potential cause of actions as of December 2014.

intended to injure Plaintiff and was done with reckless indifference to plaintiff entitling Plaintiff to an award in the amount of \$500,000.00.

WHEREFORE, Plaintiff prays that this Court grant judgment to him containing the following relief:

1. An award of plaintiff's actual damages in an amount not less than \$2.5 million, or an amount to be determined at trial for loss of wages, benefits, and promotional opportunities, including an award of front pay compensating plaintiff for loss of future salary and benefits;

2. An award of damages in an amount not less than \$1 million to be determined at trial to compensate Plaintiff for mental anguish, humiliation, embarrassment, and emotional injury;

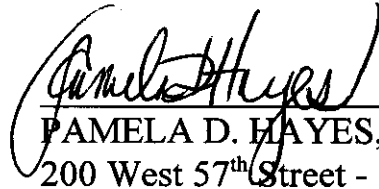
3. An award of punitive damages;

4. An order enjoining defendants from engaging in the wrongful practices alleged herein;

5. An award of reasonable attorneys' fees and the costs of this action; including attorneys' fees; and

6. Such other and further relief as this Court may deem just and proper.

DEMAND FOR A JURY TRIAL.


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