

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DANIEL BRAUN,

Plaintiff,

COMPLAINT

-against-

THE CITY OF NEW YORK,
ASSISTANT COMMISSIONER OF BITS WALLACE
and THE FIRE DEPARTMENT OF NEW YORK,

JURY TRIAL DEMANDED

Defendant(s).

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The plaintiff, complaining of the defendants, by his attorneys, FRED LICHTMACHER, of the Law Office of Fred Lichtmacher P.C., respectfully shows to this Court and alleges:

JURISDICTION

1 Jurisdiction is founded upon the existence of a Federal Question.

2 This is an action to redress the deprivation under color of statute, ordinance, regulation, custom, or usage of rights, privileges, and immunities secured to plaintiff by the Fourth and Fourteenth Amendments to the Constitution of the United States pursuant to 42 U.S.C. § 1983.

3 Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1343(a) (3).

4 Venue is appropriate pursuant to 28 U.S.C. §1391 (b) (1).

PARTIES

5 The plaintiff, DANIEL BRAUN, is an adult male resident of Queens County in the City and State of New York.

6 Upon information and belief, at all times hereinafter mentioned, the defendant, NYC, was and still is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New

York.

7 At all times relevant, defendant ASSISTANT COMMISSIONER OF BITS (Bureau of Investigations and Trials) WALLACE was an employee working for the City of New York and for the Fire Department of New York.

8 At all times relevant, defendant Wallace was acting as a state actor acting under color of law.

9 At all times relevant, defendant, the New York City Fire Department (“FDNY”) is and was a public agency, and the largest municipal Fire Department in the United States, and met the definition of an “employer” under all applicable statutes.

10 This action arises under the United States Constitution, particularly under provisions of the Fourth and Fourteenth Amendments to the Constitution of the United States, and under federal law, particularly the Civil Rights Act, Title 42 of the United States Code, § 1983.

STATEMENT OF FACTS

11 Daniel Braun was employed by the FDNY beginning in November of 2006 and during his career, he reached the level of 1st grade firefighter.

12 On or about September 1, 2008, Mr. Braun was involved in a motorcycle accident, in which he suffered injuries to the rotator cuff of his right shoulder.

13 Plaintiff was placed on paid sick leave for approximately one month, and was then put on light duty until December 2008, when he returned to full duty without incident.

14 On July 20, 2009, Mr. Braun sustained work-related injuries, when another firefighter fell on top of him, causing Mr. Braun injuries to both shoulders, including a new injury to the same right rotator cuff which was now re-torn, and a totally new injury to the right labrum, and he incurred additional new injuries to his back and knees.

15 Mr. Braun reported his injuries to the FDNY Medical Office.

16 Mr. Braun was confirmed to have a Line of Duty Injury shortly thereafter and he followed all the necessary procedures and he was in line to receive permanent disability status.

17 Subsequently, on August 12, 2009, Mr. Braun was arrested and suspended until September 14, 2009.

18 In February 2010, Mr. Braun underwent surgery on the labrum of his right shoulder, properly paid for by the FDNY as a Line of Duty Injury (LODI).

19 In July 2010, Mr. Braun had further surgery on his right shoulder labrum, again paid for by the FDNY as a LODI.

20 On or about March 4, 2011, Mr. Braun went for evaluation before the 3 PHYSICIAN FDNY Medical Board Committee.

21 The plaintiff was confirmed to be permanently disabled, premised on the July 20, 2009 Line of Duty Injury when all the Doctors on the Board signed off on his disability.

22 Mr. Braun received medical treatment comprising cortisone injections and stellate ganglion blocks in his right shoulder. He has endured two years of physical therapy and is presently still undergoing pain management.

23 On December 10, 2013, Mr. Braun's showed up to work, (he was restricted and on limited duty) worked for a few hours and then his employment with the FDNY was terminated.

24 Mr. Braun is currently unemployed and has no present income.

25 Mr. Braun, as acknowledged by the FDNY, is permanently disabled due to a Line of Duty Injury.

26 Permanent disability has 3 stages in the FDNY.

27 Plaintiff cleared the first stage on his way to being granted permanent disability status.

28 Upon information and belief, the last two stages are merely rubber stamps of the initial first

stage determination.

29 When plaintiff was arrested, the Defendants illegally blocked plaintiff from continuing the process to obtain the permanent disability he is entitled to due to his job related debilitating injuries, even though his job relating disabling injuries occurred prior to his arrest.

30 Additionally, the defendants repeatedly refused to give the plaintiff access to his own records and medical records which he needed to proceed with an Article 78 challenge to his termination without being declared disabled.

31 To this day, the defendants continue to deny plaintiff access to his own medical records generated by FDNY doctors.

32 Additionally, the defendants, including but not limited to, ASSISTANT CHIEF OF BITS WALLACE, have illegally obtained sealed criminal documents from the plaintiff's federal criminal case, in violation of the Fourth Amendment and the plaintiff's due process rights, which they showed him in failed efforts to force him to resign.

33 Additionally, the defendants commenced plaintiff's OATH proceeding, but terminated the hearing without it being concluded or reaching a verdict and terminated him illegally without said Hearing.

34 On February 8, 2014, Mr. Braun again submitted an application for Disability Retirement to the FDNY, which was illegally denied.

35 This action was commenced within three years of when the plaintiff's federal claims accrued.

AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFF
VIOLATION OF THE PLAINTIFF'S RIGHTS PURSUANT TO
42 U.S.C. § 1983 AND THE FOURTEENTH AMENDMENT VIA
DEPRIVATION OF DUE PROCESS

36 Plaintiff repeats, reiterates and realleges each and every allegation contained in the prior paragraphs

with the same force and effect as is more fully and at length set forth herein.

37 Plaintiff was subjected to the violation of his Fourteenth Amendment right to procedural due process by the deprivation by the defendants of his constitutionally protected interest in his property, in this case his property being manifested in the denial of his disability and by his termination by the FDNY, by his denial of disability benefits and by the illegal unsealing of his sealed records.

38 Plaintiff was denied the process due to him, in that he was denied the prescribed procedure for termination after his permanent three quarter application was in progress.

39 Plaintiff was denied the right to complete his OATH Hearing.

40 Plaintiff had his sealed records unsealed and obtained without defendants following the proper procedures.

41 Plaintiff was deprived of his property interest in his job and in his disability from said job without constitutionally adequate pre- or post-deprivation process in that he was also denied the records he needed to pursue his Article 78 to fight his illegal termination, and in that he was denied the right to continue with application for permanent disability status which was in progress at the time of his arrest.

42 Plaintiff has a property right to his job and his disability status.

43 Plaintiff has a right to not have his sealed records released, without a Court Order or his consent, and the defendants obtained neither.

44 Further, the defendants used the illegally unsealed records in an ongoing violation of plaintiff's rights to the date of his termination, on December 10, 2013 and during his more recent denial of his disability benefits.

45 The defendants deprived him of all of the aforesaid rights.

46 The defendants denied him of said rights without allowing him the prescribed process due pursuant to NYC, FDNY and legally prescribed procedures.

47 By reason of the defendants' actions and inactions the plaintiff was subjected to the loss of his job and his benefits, he was pecuniarily and emotionally harmed, his sealed records were illegally obtained and he was otherwise harmed.

48 By reason of the aforesaid, the plaintiff has been damaged in a sum not to exceed THREE MILLION (\$3,000,000.00) DOLLARS, plaintiff is entitled to an award of punitive damages, and an award of attorneys' fees is appropriate pursuant to 42 U.S.C. §1988.

AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFF
VIOLATION OF THE PLAINTIFF'S RIGHTS PURSUANT TO
42 U.S.C. § 1983 AND THE FOURTH AMENDMENT VIA
AN ILLEGAL SEIZURE OF PLAINTIFF'S SEALED RECORDS

49 Plaintiff repeats, reiterates and realleges each and every allegation contained in the prior paragraphs with the same force and effect as is more fully and at length set forth herein.

50 Plaintiff was subjected to the violation of his Fourth Amendment rights by an illegal seizure of his sealed records.

51 By reason of the defendants' actions and inactions the plaintiff was subjected to the loss of his job and his benefits, he was pecuniarily and emotionally harmed, his sealed records were illegally obtained and he was otherwise harmed.

52 By reason of the aforesaid, the plaintiff has been damaged in a sum not to exceed THREE MILLION (\$3,000,000.00) DOLLARS, plaintiff is entitled to an award of punitive damages, and an award of attorneys' fees is appropriate pursuant to 42 U.S.C. §1988.

WHEREFORE, plaintiff demands judgment against the defendants in a sum not to exceed THREE MILLION (\$3,000,000.00) DOLLARS, punitive damages and attorneys' fees pursuant to 42 U.S.C.

§1988 on the First Cause of Action; and THREE MILLION (\$3,000,000.00) DOLLARS and punitive damages on the Second Cause of Action, together with costs and disbursements of this action; a trial by jury of all issues involved in this complaint; and such other and further relief as this Court may deem just and proper under the circumstances.

Dated: December 10, 2016
New York, New York

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