

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
SEAN JOSHUA

Plaintiffs,

-against-

VALLEY STREAM FIRE DEPARTMENT

Defendant.
-----X

Index No.:

COMPLAINT

**PLAINTIFF DEMANDS A
TRIAL BY JURY**

Plaintiff, SEAN JOSHUA, by and through his attorneys, JONATHAN A. TAND & ASSOCIATES, respectfully alleges, upon knowledge as to himself and his own actions, and upon information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has original jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. §§ 1331 and 1343.
2. The unlawful practices alleged herein were committed within the State of New York, County of Nassau. Accordingly, this action properly lies in the United States District Court for the Eastern District of New York, pursuant to 28 U.S.C. § 1391.
3. The supplemental jurisdiction of this Court is invoked over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.
4. The jurisdictional prerequisites of this lawsuit have been satisfied. Specifically, on or about April 7, 2017, Plaintiff served upon Defendants a Notice of Claim. Moreover, a charge was filed with the Equal Employment Opportunity Commission on or about April 14, 2017 and given was the charge number 520-2017-02049. Plaintiff received a subsequent Right to Sue letter from the Equal Employment Opportunity Commission on

June 27, 2017. Further, this lawsuit was commenced within one year and ninety days from the incidents giving rise to this action.

PARTIES

5. Plaintiff Sean Joshua, is an African American Male who is a resident and domiciliary of the County of Nassau in the State of New York. At all times relevant to this charge, Plaintiff, Sean Joshua, was an “employee”, of the Defendant as the term is defined by the Title VII of the Civil Rights Act of 1964 and New York State Human Rights Law.
6. Defendant Valley Stream Fire Department (“Fire Department”), at all times relevant, was and still is a municipal entity existing under the laws of the State of New York, with its principal office located at 49 Rockaway Parkway, Valley Stream, New York 11580. At all times relevant to this charge, Plaintiff Sean Joshua was a Volunteer at Valley Stream Fire Department.

FACTUAL ALLEGATIONS

7. Plaintiff Sean Joshua (“Plaintiff”), an African American male, began his career as a volunteer firefighter for the Valley Stream Fire Department (hereinafter the “Fire Department”) in or around May 2015.
8. In or around June 2015, Plaintiff took the medical, physical, and drug tests required to volunteer for the Fire Department, and submitted all the necessary paper work to join the Department by mid-July.
9. In or around August 2015, Plaintiff was sworn into the Department, at a council meeting, and received his pager, gear and key swab. Shortly after, Plaintiff began his probation period with the Department. Upon information and belief volunteers are on probation while they attempt to pass essential, primary and equipment tests.

10. Shortly after becoming sworn in Plaintiff was exposed to continuous racist comments at the firehouse that went unpunished. In or around November 2015, Christopher Madrid Suarez, a Hispanic volunteer, displayed pictures of females to the individuals present at the firehouse. While Madrid was presenting the pictures, another volunteer Tony Manta, a Caucasian male, commented, "They're not attractive they are black".
11. While on probation with the Fire Department, Plaintiff was employed part time at the Valley Stream State Park, was enrolled full time in Nassau County Community College's Criminal Justice Program, and volunteered at the Fire Department at night.
12. Notwithstanding Plaintiff's hectic schedule, Plaintiff remained dedicated to his responsibilities as a volunteer at the Fire Department and in or around November 2015, he passed the Essentials Exam at the Bethpage Fire School. In order to pass the exam, Plaintiff was required to attend classes Tuesday and Thursday nights from 7:00 PM to 10:00 PM.
13. In or around November 2015, Plaintiff learned that the Fire Department was contemplating suspending volunteers on probation for bad attendance. Despite Plaintiff's attendance challenges, he remained committed to passing the "truck exam".
14. In or around December 2015, Plaintiff began to feel uncomfortable while at the firehouse as it became a more escalating racist environment. Plaintiff began to endure increasing racial slurs not only in front of his fellow peers but in front of the higher ups at the Fire Department as well. For example, Jack Skellington, a Caucasian male volunteer, made several harsh racist comments to Plaintiff in front of numerous volunteers including Tony Manta, and higher-ranking individuals such as Patrick Scanlon, that severely upset Plaintiff.

15. Tony Manta's comments included *"why do black people have no rights?" "Because Beyoncé said to the left to the left,"* and; *"How do you keep a black person out of your yard?" "You hang one in the front".*
16. Plaintiff was not only distressed about these comments but shocked that the highest-ranking individual present did not punish Skellington but laughed along with him. Plaintiff began to become unsettled and believed that it would be futile to report these matters as the individual that he would normally report them to Scanlon who was present during these matters and laughed with Skellington as opposed to reprimanding him.
17. In or around December 2015, Plaintiff asked the Lieutenant of Engine Company 1, Scanlon, for training in preparation for the truck exam. Scanlon declined to train Plaintiff and advised to tell him to ask someone else. This shocked Plaintiff as Scanlon had previously offered to help other similarity situated, non-African American, volunteers with training in preparation for this specific exam including but not limited to Tony Manta, a Caucasian male, who had been volunteering around the same time as Plaintiff.
18. In or around January 2016, several volunteers on probation stopped going to events and training. Scanlon expressed his anger regarding poor attendance from trainees on probation through a group message. Plaintiff expressed to Scanlon that his grandparents were sick and his vigorous schedule made it extremely difficult, yet he still wanted to be involved.
19. In or around February 2016, Plaintiff took the truck exam, that Scanlon refused to train him for. Scanlon alleged Plaintiff underperformed, especially on the hoses and as a result, Plaintiff failed said exam. At the time, Scanlon said to Plaintiff "maybe this is not for you." Plaintiff felt pressure by Scanlon and Rob Martin Sr, a veteran firefighter who had also been present during his exam, as they kept alluding to Plaintiff's resignation. Despite

insinuating that Plaintiff may not be good enough to accomplish his duties as a volunteer for the Fire Department, Scanlon told Plaintiff to wait to speak to the Captain of Engine 341, Joey Fernandez Sr (hereinafter "Fernandez").

20. At the time, Plaintiff was extremely upset as he felt he was being pushed out of the Fire Department. Feeling upset and defeated by Scanlon's comment, Plaintiff did not wait for Fernandez, but instead went home to get his pager and other equipment in anticipation of resigning. Shortly after, Plaintiff returned to the Fire Department, wherein Fernandez was not present, only Scanlon. Plaintiff turned in his pager and resigned.
21. The next day, Fernandez called Plaintiff to question him as to what happened during the exam. Plaintiff explained that Scanlon told him that he failed on the hose portion of the exam. Fernandez suggested that Plaintiff return to the firehouse to go over what he did wrong.
22. Upon information and belief, Fernandez was in the process of stepping down as Captain and Scanlon was going to be taking his position. Plaintiff felt that with Scanlon as Captain, he would have no one on his side. Plaintiff and Fernandez had a close relationship as Fernandez hired Plaintiff as a part time security guard at a bar in Manhattan in or around December 2015. However, after Plaintiff resigned from the Fire Department, Fernandez texted him stating that the dates offered to him for part time employment were no longer available.
23. In or around August 2016 Scanlon became Captain of Engine Company 341. In or around October 2016, Plaintiff tried to rejoin the Fire Department. On or around October 4, 2016, Plaintiff sent now Captain Scanlon a message stating that he was ready to come back to the Fire Department and was ready to give 150 percent. This message went unanswered. On

or around October 27, 2016, Plaintiff sent a similar text message to the acting Lieutenant, John Franco (hereinafter “Franco”), stating that he was ready to return to the Department. This message also went unanswered.

24. Plaintiff sent two more text messages to Scanlon on November 29, 2016 and January 21, 2017, hoping to get a response so that he could return to the Fire Department. All of Plaintiff’s messages went unanswered.
25. On or around February 2, 2017, at appointed 7:00 PM, Plaintiff decided to go to the Department headquarters to see if he could speak with someone about rejoining as all his messages went unreturned. Plaintiff rang the doorbell of the fire house and was met by Tony Manta.
26. Prior to Tony Manta opening the door, Plaintiff overheard some sort of commotion as if someone was rushing to leave the common space of the firehouse to avoid seeing him. Tony Manta welcomed Plaintiff into the firehouse. Although, Tony Manta was the only person visibly present, Plaintiff knew that Franco was there because his personal vehicle was in the parking lot. Plaintiff assumed he was in the officer’s room as the door was closed.
27. After approximately five minutes of small talk with Tony Manta, Scanlon entered the room and greeted Plaintiff. Scanlon then opened the officer’s door and Franco came out and briefly greeted Plaintiff. Franco and Scanlon left the room stating they were going downstairs to the Chief’s office to discuss another firefighter’s resignation unrelated to Plaintiff.
28. Scanlon and Franco returned from the Chief’s office and asked Plaintiff to step into the officer’s room and close the door. Scanlon started the conversation by stating “I guess you

are here because you are interested in rejoining.” Scanlon then stated that he could not allow Plaintiff rejoin the Fire Department because something alarming had occurred.

29. Scanlon proceeded to tell Plaintiff that detectives came to question Franco about Plaintiff and his involvement in a vehicular homicide that Franco and Scanlon both provided Plaintiff’s entire file to the detective. Plaintiff took this news very seriously as Scanlon is a veteran police officer.
30. Plaintiff still in disbelief as to what both Scanlon and Franco had told him, asked for all the information and the name of the detectives but was denied any information. Scanlon and Franco stated they could not give him any information and refused to provide the precinct where these allegations originated.
31. Scanlon went on to interrogate Plaintiff all the while denying him any specific information. Scanlon proceeded to explain that he was uncomfortable with Plaintiff and it was strange to him that detectives would come to the Fire Department to inquire about a volunteer.
32. However, during the same conversation he stated that Plaintiff would be able to join the Rescue Company next door. Scanlon then walked out of the officer’s room to the Rescue Company down the hall. Scanlon then handed Plaintiff a piece of paper and asked him to write his personal information to be submitted to the Rescue Company.
33. Scanlon stated once this all cleared up they could discuss rejoining. Plaintiff was left confused as in the same conversation he was accused of vehicular homicide, told he could not rejoin the Department, and then offered another position.
34. Plaintiff left the firehouse around 7:40 PM. On the drive home, Plaintiff called the Chief’s office and First Assistant Chief Jason Croak answered. Plaintiff introduced himself and explained to Chief Croak what had just happened at the firehouse and how he was very

unhappy about the outrageous accusations of vehicular homicide. Chief Croak stated if they did not want Plaintiff in the Department they should tell him. Chief Croak then stated if he would call Plaintiff back. Chief Croak never again attempted to reach Plaintiff.

35. After about two days, Brian Ferrucci of the Rescue Company called Plaintiff, Ferrucci asked Plaintiff if he was still interested in joining the Rescue Company to which he responded no, as Plaintiff was extremely uncomfortable with the previous interaction with Scanlon.
36. On or around February 7, 2017, Plaintiff call Nassau County Police Headquarters to discuss the vehicular homicide investigation Scanlon had described.
37. Plaintiff then asked for Kevin Smith, a former Professor of his at Nassau Community College, who was also a high-ranking individual in the Nassau County Police Department. Mr. Smith asked Plaintiff for all of his personal information, including social security number, to check to see if there is an open investigation.
38. Mr. Smith called Plaintiff back and told him no investigation was underway and his name came back completely clear. Plaintiff was extremely upset as he believed Scanlon had made the entire vehicular homicide investigation up to dissuade him from rejoining the Fire Department. Furthermore, Plaintiff has not heard from anyone from the Department since Ferrucci asked him if he was still interested in joining the Rescue Company.
39. The above are just some of the examples of unlawful conduct to which Defendants subjected Plaintiff on an ongoing continuous basis.
40. It is clear that Defendants have a pattern and practice of discrimination.

AS A FIRST CAUSE OF ACTION
Defendant's Violation of Title VII

41. Plaintiff repeats and re-alleges each and every allegation contained herein above.
42. Title VII states in relevant part as follows: SEC 200e-2 [Section 703] (a) Employer Practices; it shall be an unlawful employment practice for an employer – (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; . . .
43. Defendant engaged in unlawful employment practices prohibited by 42 U.S.C §2000e et seq., by discriminating against Plaintiff because of her race.

AS A SECOND CAUSE OF ACTION
FOR DISCRIMINATION UNDER STATE LAW

44. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.
45. § 296. Unlawful discriminatory practices. Provides that:
“1. It shall be an unlawful discriminatory practice: (a) For and employer or licensing agency, because of an individual's age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, or domestic violence victims status, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.”
46. Defendants engaged in an unlawful discriminatory practice by discriminating against the Plaintiff because of his race.

47. Plaintiff hereby makes a claim against Defendants under all of the applicable paragraphs of Executive Law Section 296.

AS A THIRD CAUSE OF ACTION
FOR DISCRIMINATION UNDER NEW YORK STATE LAW

48. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.

49. New York State Executive law §296(6) provides that it shall be an unlawful discriminatory practice.

50. “For any person to aid, abet, incite compel or coerce the doing of any acts forbidden under this article, or attempt to do so.”

51. Defendants engaged in an unlawful discriminatory practice in violation of New York State Executive law §296(6) by aiding and abetting, inciting, compelling and coercing the discriminatory conduct.

DEFENDANT’S LIABILITY

52. Defendant, while acting under the color of law, deprived Plaintiff of all the above-mentioned constitutional rights in that Defendants intentionally committed, condoned or was deliberately indifferent to the aforementioned violations of the Plaintiff’s rights.

Such deliberate indifference may be inferred in the following ways:

(a) Defendants’ custom or practice of depriving the Plaintiff of the aforementioned constitutional rights. These practices were so persistent and wide spread that they constitute the constructive acquiescence of policy makers;

(b) Inadequate training/supervision was likely to result in such violations that policymakers can reasonably be said to have been deliberately indifferent to the need to provide better training and supervision; and

(c) Policymakers engaged in and/or tacitly condoned the deprivations.

WHEREFORE, the Plaintiff demands judgment against Defendants for compensatory, emotional, psychological and punitive damages, liquidated damages, injunctive relief, and any other damages permitted by law pursuant to the above-referenced causes of action. It is respectfully requested that the Court grant the Plaintiff any other relief to which he is entitled, including but not limited to:

1. Awarding reasonable attorneys' fees and the costs and disbursements of this action;
2. Granting such other and further relief that the Court deems just and proper. Further, Plaintiff demands a trial by jury.

Dated: Garden City, New York
September 28, 2017

JONATHAN A. TAND & ASSOCIATES



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