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★ NOV 06 2017 ★

LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NOEL BRANDT,

PLAINTIFF

COMPLAINT
CV 17 6448

v

JURY DEMANDED

THOMAS GARDELLA,

INCORPORATED VILLAGE OF SAG HARBOR,

DEFENDANT

WEXLER, J.

LINDSAY, M.J.

-----X

NOEL BRANDT, by his attorney LAWRENCE KELLY, alleges as and for a Complaint as against THOMAS GARDELLA and INCORPORATED VILLAGE OF SAG HARBOR for violations of 42 USC 1983 under the Fifth and Fourteenth Amendment with jurisdiction under 28 USC 1331 as follows;

1. NOEL BRANDT is at present a resident of County of Suffolk State of New York, and was, at all times relevant hereto, a resident of Southampton Town, Suffolk County New York and a resident of that area of Southampton Town which was a geographic area of the Sag Harbor Fire Department coverage area.
2. At all times relevant hereto, THOMAS GARDELLA was the Fire Chief of the Sag Harbor Fire Department.

3. INCORPORATED VILLAGE OF SAG HARBOR is a municipal corporation organized and existing under the laws of the State of New York.
4. INCORPORATED VILLAGE OF SAG HARBOR owns and maintains a volunteer Fire Department known as the Sag Harbor Fire Department.
5. In 2006, in order to purchase property, Sag Harbor Fire Department developed a not for profit corporation known as Sag Harbor Fire Department Incorporated.
6. New York State Civil Service Law Section 75 grants to a volunteer firefighter the protection of a due process hearing with the opportunity to provide testimony and an opportunity to be heard prior to the imposition of discipline.
7. Sag Harbor Fire Department (also known as Sag Harbor Fire Department Incorporated) provides for fire protection services in the village of Sag Harbor and in nearby areas known as the Sag Harbor Fire Department fire protection district in both East Hampton Town and Southampton Town.
8. Bylaws govern the operation of the Sag Harbor Fire Department (also known as Sag Harbor Fire Department Incorporated).
9. The By Laws of the Sag Harbor Fire Department Incorporated are annexed as Exhibit Number 1.
10. The By Laws organize the Sag Harbor Fire Department Incorporated into five companies.
11. The names of the five companies are (a) Gazelle Hose Company, (b) Phoenix Hook and Ladder Company, (c) Otter Hose Company, (d) Murray Hill Hose Company, and (e) Montauk Company.

12. At all times relevant to this matter prior to his termination, NOEL BRANDT was a member for over a decade of the Sag Harbor Fire Department as an active volunteer firefighter.
13. At all times relevant to this matter prior to his termination, NOEL BRANDT is and was over the age of eighteen years during his years of service in the Sag Harbor Fire Department.
14. NOEL BRANDT, at various times, served as a volunteer firefighter in two of the above named companies within the Sag Harbor Fire Department, and at all times relevant hereto was an active volunteer member of a fire company within the Sag Harbor Fire Department (also known as Sag Harbor Fire Department Incorporated).
15. NOEL BRANDT served for a time as Warden of the Sag Harbor Fire Department.
16. New York State Civil Service Law, Section 75 provides that an employee may not be subjected to a disciplinary reprimand without a formal hearing or other due process safeguards.
17. Section 75 of the New York State Civil Service Law applies to a person who is an exempt volunteer firefighter as defined in the General Municipal Law.
18. General Municipal Law Section 200 states an exempt volunteer firefighter is declared to be a person who as a member of a volunteer fire company duly organized under the laws of the State of New York shall have at any time after attaining the age of eighteen years faithfully actually performed service in the protection of life and property from fire within the territory immediately protected by the company of which he is a member and while a bona fide resident therein for a period of five years.

19. General Municipal Law Section 100 defines a fire company.
20. Sag Harbor Fire Department (also known as Sag Harbor Fire Department Incorporated) is a “fire company” as that term is defined in General Municipal Law.
21. Sag Harbor Fire Department has a governing Board of Wardens, which includes two wardens from each company.
22. Chiefs of the Sag Harbor Fire Department are also members of the Board of Wardens.
23. The Chief of the Department, or one of his Assistant Chiefs in his/her absence, run the meetings of the Board of Wardens.
24. At all times relevant hereto, Chief THOMAS GARDELLA ran the disciplinary proceedings involving NOEL BRANDT.
25. The Chief of the Sag Harbor Fire Department is a policy maker for the Incorporated Village of Sag Harbor.
26. The Chief of the Sag Harbor Fire Department creates policy for the Sag Harbor Fire Department.
27. In the matter of the discipline of NOEL BRANDT, the Chief of the Department THOMAS GARDELLA intentionally imposed an illegal policy of failing to provide NOEL BRANDT with the opportunity to testify in his own behalf prior to discipline being imposed.
28. In a meeting with the Chief of the Department THOMAS GARDELLA and two Assistant Chiefs, NOEL BRANDT outlined the sexual assault on his body perpetrated by Fire Department member Ray Milazzo on fire department property and the snide encouragement of same by members Brian Gilbride and Eugene Garypie.

29. In the matter of the discipline of NOEL BRANDT, the Chief of the Fire Department THOMAS GARDELLA was aware of the due process requirements to allow NOEL BRANDT to testify on his own behalf prior to suspension and termination.
30. Chief THOMAS GARDELLA created a policy which would provide for discipline for NOEL BRANDT without providing him due process of law, including negating NOEL BRANDT'S opportunity to testify in a hearing before the Board of Wardens prior to suspension or termination.
31. In the matter of the discipline of NOEL BRANDT, the Chief of the Fire Department THOMAS GARDELLA was aware that he was creating a policy at odds with the procedural due process rights of NOEL BRANDT, and THOMAS GARDELLA intentionally violated those procedural due process rights.
32. The Chief of the Department THOMAS GARDELLA acted with the intent to violate the procedural due process rights of NOEL BRANDT.
33. In doing so, THOMAS GARDELLA created a policy and practice for the INCORPORATED VILLAGE OF SAG HARBOR.
34. The current set of By Laws were voted in by the Sag Harbor Fire Department membership and have been in effect for more than ten years.
35. A recent attempt to install a "new" set of By Laws for the Sag Harbor Fire Department was voted on by the membership and failed.
36. At all times relevant to this matter, NOEL BRANDT, although suspended and terminated from the Sag Harbor Fire Department, was never charged under the By Laws governing the operation of discipline within the Sag Harbor Fire Department and volunteer firefighters in the State of New York.

37. At all times relevant to this matter, the Board of Wardens of Sag Harbor Fire Department were never informed of the sexual assault on member NOEL BRANDT by member Ray Milazzo and the background for the text message by NOEL BRANDT, nor were they granted the opportunity to hear from NOEL BRANDT under oath in a Board of Wardens hearing.

38. At all times relevant to this matter, the Chief of the Sag Harbor Fire Department THOMAS GARDELLA intentionally prevented the Board of Wardens from hearing the testimony of NOEL BRANDT and prevented NOEL BRANDT from the opportunity to provide testimony in his own behalf.

39. NOEL BRANDT, at all relevant times herein, qualified as an exempt volunteer firefighter.

40. NOEL BRANDT was suspended by the Sag Harbor Fire Department in June 2015 without any procedural due process protections.

41. The suspension of NOEL BRANDT continued through January 2016 without any procedural due process protections.

42. NOEL BRANDT was dropped from the rolls of the Sag Harbor Fire Department by a vote of the INCORPORATED VILLAGE OF SAG HARBOR village board in January 2016 without any procedural due process protections.

43. NOEL BRANDT was never provided any charges under the By Laws of the Sag Harbor Fire Department.

44. NOEL BRANDT was never provided a hearing by the Sag Harbor Fire Department.

45. NOEL BRANDT was never provided an opportunity to testify in his own behalf by the Sag Harbor Fire Department at a Board of Wardens hearing.

46. The defendant INCORPORATED VILLAGE OF SAG HARBOR followed a pattern and practice and allowed policy maker THOMAS GARDELLA in the Sag Harbor Fire Department to conduct a policy of denying procedural due process to NOEL BRANDT.

47. The defendant INCORPORATED VILLAGE OF SAG HARBOR followed a pattern and practice and allowed policy maker THOMAS GARDELLA in the SAG HARBOR FIRE DEPARTMENT to deny NOEL BRANDT an opportunity to testify in his own behalf and deny the Board of Wardens the information as to the sexual assault on NOEL BRANDT by a separate member of the Department, Ray Milazzo.

48. As a result of his suspension from the Sag Harbor Fire Department and termination from the Sag Harbor Fire Department by vote of the Village of Board of the Incorporated Village of Sag Harbor in January 2016, NOEL BRANDT was denied procedural due process of law under the procedural due process rights available to volunteer fire fighters in the State of New York including NOEL BRANDT.

UNDERLYING FACTS OF THE SITUATION

49. On June 4, 2015, NOEL BRANDT was sexually assaulted by Ray Milazzo, a member of the Sag Harbor Fire Department at a Sag Harbor Fire Department function.

50. SAG HARBOR FIRE DEPARTMENT, through actions of its Chief followed a pattern and practice to suppress the information on the assaultive conduct

by Ray Milazzo, and suppress the knowledge of the sexual assault on the premises of the Sag Harbor Fire Department.

51. Ray Milazzo, without invitation to physically touch NOEL BRANDT, grabbed NOEL BRANDT's clothed penis and scrotum with his hand and continued to hold it for a period of time at a Sag Harbor Fire Department function in June 2015.

52. The physical assault by Ray Milazzo was done in the view of a number of members of various fire companies, including NOEL BRANDT's Uncle Brian Gilbride and Eugene Garypie, who were both encouraging the action of Ray Milazzo.

53. As a victim of a male on male sexual assault, NOEL BRANDT was in unfamiliar territory, looking to process the event for a period of time.

54. Ray Milazzo is some twenty to thirty years NOEL BRANDT'S senior, and NOEL BRANDT did not react by returning any physical assault on the old man.

55. Upon returning to his home on June 4, 2015, NOEL BRANDT, convinced that the egging on by his Uncle Brian Gilbride and Eugene Garypie to Milazzo had instigated and/or continued the sexual assault, sent a text message to Eugene Garypie to relay to his Uncle Brian, indicating that their encouragement of such a sexual assault by proxy was unacceptable, and NOEL BRANDT was more than ready to handle himself physically in person if they wanted to come by his house to continue what they had encouraged in the assault on NOEL BRANDT by the old man Ray Milazzo.

56. The text message read in sum and substance that he did not appreciate their snickering over the sexual assault and the two of them could come by

Brandt's house and the text to Garypie noted "Let your friend know I am having a 2 for 1 sale on whoop ass" ...

57. Instead of dealing with NOEL BRANDT as a victim of a sexual assault and supporting his rightfully indicating he would defend himself against any further harassment or sexual assaults, or investigating and charging the assault by Milazzo, Chief THOMAS GARDELLA and the Incorporated Village of Sag Harbor terminated NOEL BRANDT as a volunteer firefighter without due process of law.
58. "Uncle Brian", Brian Gilbride is the immediate former Mayor of the Incorporated Village of Sag Harbor.
59. In 2017, THOMAS GARDELLA ran on the same ticket as incumbent Mayor Schroeder for a seat on the five-member Sag Harbor Village Board of Trustees.
60. At all times relevant herein, the Sag Harbor Village Board left the policy making for the Sag Harbor Fire Department to Chief THOMAS GARDELLA of the Sag Harbor Fire Department.
61. At a Board of Wardens meeting of the Sag Harbor Fire Department following the sexual assault, the victim NOEL BRANDT was forced by THOMAS GARDELLA to wait outside the wardens meeting for several hours while the Wardens sat in executive session and took testimony from the assailant Ray Milazzo and others.
62. The Board of Wardens was never advised in 2015 or 2016 of NOEL BRANDT having been the victim of the Milazzo sexual assault.
63. At the Board of Wardens meeting, while waiting outside the room or at any time before or thereafter, NOEL BRANDT was not provided any written

notice of what he was alleged to have done which would have caused him to be timely charged for any offense as a volunteer firefighter with the Sag Harbor Fire Department.

64. At the 2015 Board of Wardens meeting of the Sag Harbor Fire Department, while waiting outside the room or at any time before or thereafter, NOEL BRANDT was not provided the opportunity to testify in a formal hearing.

65. At the 2015 Board of Wardens meeting of the Sag Harbor Fire Department, NOEL BRANDT was not provided any opportunity to contest any charges made against him.

66. NOEL BRANDT was only called into the room following the 2015 Executive Session of the Board of Wardens of the Sag Harbor Fire Department to be notified that the suspension was still in place.

67. After weeks of further suspension following the Executive Session of the Board of Wardens, NOEL BRANDT contacted Chief THOMAS GARDELLA of the Sag Harbor Fire Department, and was advised that his suspension would continue and he would have to pay for and attend some classes which might be described as "Anger Management".

68. NOEL BRANDT indicated to THOMAS GARDELLA that there is no provision in the By Laws for such an imposition on a member, to be made to pay out of his own pocket for classes as part of discipline imposed without the benefit of due process, and he would request that THOMAS GARDELLA point out any clause in the By Laws providing for same.

69. THOMAS GARDELLA provided no such citation of the By Laws.

70. There is no basis in the By Laws for a sexual assault victim to be forced to pay money out of the victim's pocket for "Anger Management" classes.

71. There was no basis for any Sag Harbor Fire Department fire action with regard to the text message from NOEL BRANDT to Eugene Garypie which involved a sexual victim reaching out outside of the fire department to one of the pair egging on the sexual attack which occurred on fire department property.
72. When NOEL BRANDT protested that there was no basis in the By Laws for such an imposition of an obligation on a member, Fire Department Chief THOMAS GARDELLA submitted the termination order to the Sag Harbor Village Board, and the Sag Harbor Village Board voted to terminate NOEL BRANDT in January 2016.
73. At the time NOEL BRANDT was suspended, he was a member in good standing and a member vested in the Length of Service Award Program (LOSAP), providing for an accumulation of annuity payments by dint of a credit for every year of service.
74. In a recent Village election in 2017, the LOSAP payment for Sag Harbor Fire Department volunteer fire fighters was boosted from \$20 per month per year of service as a volunteer firefighter to \$30 per month per year of service as a volunteer firefighter.
75. At the time NOEL BRANDT was suspended, he was a member in good standing, enjoying his service as a volunteer firefighter and a member eligible for tax credits and offsets for a home owner under the Volunteer Fire Fighter tax offset.
76. As a result of the above actions taken by THOMAS GARDELLA and INCORPORATED VILLAGE OF SAG HARBOR, NOEL BRANDT'S rights under the Fourteenth Amendment to procedural due process have been violated,

and he has been caused to suffer pain and suffering, loss of enjoyment of life, loss of statutory benefits of service as a volunteer fire fighter in good standing, monetary damages , all in the sum of NINE HUNDRED AND FIFTY THOUSAND DOLLARS (\$950,000), together with the costs and disbursements and attorneys fees necessitated to recover his damages herein pursuant to 42 USC 1988.

77. As a result of the intentional misconduct of individual defendant THOMAS GARDELLA, the plaintiff NOEL BRANDT is entitled to the awarding of punitive damages as against THOMAS GARDELLA to punish the misconduct and deter future misconduct in the amount of THREE HUNDRED THOUSAND DOLLARS (\$300,000.00)..

WHEREFORE, plaintiff NOEL BRANDT seeks compensatory damages under 42 USC 1983 as against THOMAS GARDELLA and INCORPORATED VILLAGE OF SAG HARBOR in the sum of NINE HUNDRED FIFTY THOUSAND DOLLARS (\$950,000) , together with the costs and disbursements of this action and attorneys fees pursuant to 42 USC 1988, and punitive damages as against THOMAS GARDELLA in the amount of THREE HUNDRED THOUSAND DOLLARS (\$300,000), together with the costs and disbursements of this matter and attorneys fees under 42 USC 1988.

A handwritten signature in black ink, appearing to read "Lawrence E. Kelly", written over a horizontal line.

October 30, 2017

LAWRENCE E. KELLY

Attorney for Plaintiff NOEL BRANDT

11 CEDAR BAY COURT

BAYPORT NEW YORK 11705

631 472 0890