

IN THE CIRCUIT COURT OF THE  
11<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

FAYE DAVIS,

GENERAL JURISDICTION DIVISION

vs.

CASE NO.: **12-35125 CA 4 2**  
FLORIDA BAR NO.: 350400

MIAMI-DADE COUNTY, FLORIDA  
and INTERNATIONAL ASSOCIATION  
OF FIREFIGHTERS LOCAL 1403,

FF401.00  
2-20 DAY ISS  
#3760014

CIRCUIT & COUNTY COURTS  
MIAMI-DADE COUNTY, FL  
DATRAM

2012 SEP -5 PM 3:11

FILED FOR RECORD

Defendants.

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, Faye Davis ("Plaintiff"), hereby sues Defendants Miami-Dade County, Florida (the "County") and International Association of Fire fighters Local 1403 (the "Union") (collectively referred to as "Defendants"), and in support thereof, alleges:

DEBRA SANGHEZ

**Nature of the Case**

1. This is an action for damages in excess of \$15,000.00 arising from unlawful employment practices. This action is brought pursuant to the Florida Civil Rights Act of 1992 ("FCRA"), Chapter 760, Florida Statutes. Plaintiff seeks equitable relief and damages including declaratory and injunctive relief, back pay, compensatory damages, attorney's fees, costs and other litigation expenses pursuant to §760.11, Fla. Stat.; and all other relief this Court deems just and proper.

**Jurisdiction, Parties and Venue**

2. The jurisdiction of this Court is invoked pursuant to Florida Statutes §760.07 and §760.011.
3. Plaintiff is a resident of Miami-Dade County, Florida.

**CYNTHIA A. EVERETT, P.A.**

4. Plaintiff is a member of a protected class based upon her race, black and gender, female.

5. The County is an employer within the meaning of the FCRA and is located in Miami-Dade County, Florida.

6. The Union is a labor organization within the meaning of the FCRA and it has its principal place of business in Miami-Dade County, Florida. The Union is the exclusive bargaining agent for firefighters employed by the County and had entered into a collective bargaining agreement with the County during all relevant periods.

7. At all material times, Plaintiff was an employee of Miami-Dade County and an aggrieved person within the meaning of the FCRA. At all material times, Plaintiff was not a member of the Union.

8. The unlawful conduct alleged herein occurred in Miami-Dade County, Florida.

**Compliance with Procedural Requirements**

9. Plaintiff has met all conditions precedent and has exhausted all administrative remedies under the Florida Civil Rights Act of 1992, Ch. 760, Fla. Stat. prior to the institution of this action including:

a. On or about December 30, 2010, Plaintiff timely filed a charge of race and sex discrimination and retaliation against the County with the Florida Commission on Human Relations ("FCHR") which was jointly filed with the United States Equal Employment Opportunity Commission ("EEOC"); and

b. On or about December 30, 2010, Plaintiff timely filed a charge of race and

sex discrimination and retaliation against the Union with the FCHR which was jointly filed with the EEOC.

10. Plaintiff has exhausted all available administrative remedies in accord with the aforementioned statutes prior to instituting this civil action.

11. More than 180 days have passed since Plaintiff filed all of her respective charges with the FCHR without the agency effecting a conciliation of this matter or making a finding adverse to Plaintiff.

12. All conditions precedent to asserting a claim under FCRA have been met pursuant to §§760.11(4) and (8), Florida Statutes.

#### **Factual Background**

13. Plaintiff was first employed by the County in 1987 as a firefighter. Plaintiff is currently employed by the County as a fire captain. Throughout Plaintiff's employment with the County, Plaintiff was qualified for her position and competently performed her duties.

14. Plaintiff is a state licensed paramedic.

15. Plaintiff was competitively promoted to the position of fire lieutenant on April 20, 1999 and competitively promoted to the position of fire captain on July 19, 2004.

16. Since 2004, Plaintiff has made repeated complaints in writing and in person to the Defendants about the discriminatory hiring and promotional practices within the fire-rescue department. In 2005, Plaintiff, as president of the Progressive Firefighters Association, authored letters to Chief Herminio Lorenzo concerning the lack of diversity within the County fire-rescue department and disparate discipline regarding employees of different races.

17. On or about February 27, 2007, Plaintiff drafted a letter to County Mayor Carlos

Alvarez, with a copy to the fire-rescue chief and the Defendant Union president, where she reported that a fire-rescue battalion chief had used a pejorative word, commonly referred to as the “n” word, to describe black employees of the fire-rescue department; that she had reported the incident to the deputy fire-rescue chief to the Defendant Union president and that no action was taken.

18. In May of 2007, Plaintiff first took the Chief Fire Officer exam in order to be promoted. Once the scores of the persons taking the exam are posted, the promotion lists, based on the scores, are viable for one year.

19. On October 14, 2007, Plaintiff drafted a follow-up letter regarding the February 27, 2009 incident when the fire-rescue department had still not taken any disciplinary action against the battalion chief who had used the “n” word. Plaintiff was not promoted to chief fire officer from the 2007 list.

20. In 2008, Plaintiff again took the Chief Fire Office test and ranked number ten. On July 21, 2008, Plaintiff participated in a March to protest the planned discipline of a black firefighter for wearing a bell on his holster when the fire-rescue department had not taken any action against a white fire-rescue lieutenant who had set a firefighter’s lap on fire in a prank. Plaintiff was not promoted from the 2008 list.

21. On or about May 14, 2009, Plaintiff took the 2009 promotional exam for chief fire officer and ranked number two on the list. The number one candidate was John Arias, a white male, the number three candidate was Lisa Gilbert, a black female and the fourth candidate was Angel Machado, a white male.

22. In 2009, the County, based on contractual agreements, made fire department

promotions based on vacancies in positions. Pursuant to Agreement 9 of the 2008-2011 Collective Bargaining Agreement, "a classified position becomes a vacancy at 0700 that day after separation by the incumbent from county service. This vacancy occurs only if there are no overages in the classification. Separation shall be described as the day "T" shows or should show on the Personnel Action Report ("PAR"). Despite that contractual agreement, the County, with the knowledge and consent of the Union, had and has, an established practice of allowing overages in position classifications and continuing to promote people into those same positions.

23. In 2004 the County requested an overage to promote Jose Herrera ("Herrera"), a white male, who was the last person on the 2003 chief fire officer promotional list. In April 2004, the chief fire officer list was due to expire at the end of May 2004 and Herrera was pending promotion. The next scheduled retirement was to be Chief Fire Officer Roderick Moffett on October 31, 2004. On May 21, 2004, then Fire Chief Antonio Bared wrote a memorandum approving an overage in order to promote Herrera.

24. On May 31, 2009, Chief Fire Officer Gary Gonzalez retired creating a vacancy in the chief fire officer rank. Pursuant to the County's promotional policy and practice, the County had two pay periods in which to make the promotion to fill that vacancy and based on the existing list, John Arias, a white male, should have been promoted. The County did not promote John Arias and did not otherwise fill the vacancy within two pay periods of Gary Gonzalez's retirement.

25. As a result of not being promoted, John Arias, who was number one on the promotional list, filed a grievance on or about July 9, 2009. In response to his grievance, the County, through Chief Arthur Holmes, Jr, stated "As of 7/16/09, we have 2 overages of CFO's including the retirement of CFO Gary Gonzalez. This overage was agreed upon and signed by Local 1403

referencing the relief factor for CFO is 4.6 The total number of CFO's required per contractual as of 7/16/09 is 80. The total number of CFO's currently, as of 7/16/09 is 82."

26. After Gary Gonzalez's retirement, five additional CFOs retired: James Gillis on September 30, 2009, Steven Trammell on October 13, 2009, Daniel Gonzalez on April 30, 2010, Stephen G. McKinnon on May 7, 2010 and Gary G. Novack on May 27, 2010. Despite six retirements creating six vacancies, and despite being number two on the promotional list, Plaintiff was not promoted as required by the contract.

27. When Plaintiff was not timely promoted, she filed a grievance and met with the Deputy Chief of the Fire-Rescue Department, Alfredo Suarez ("Deputy Chief"). The Deputy Chief told the Plaintiff that she was not promoted because of a 2005 oral agreement between the Union president, Stan Hills and the County Manager, George Burgess. The agreement allowed the Fire-Rescue Department to reduce the number of CFOs needed by two vacancies. The written grievance response to Plaintiff stated: "Based upon a verbal agreement between the County Manager and the IAFF Local 1403 President Stan Hills, Chief Fire Officers (CFO) were awarded thirty (30) minutes overtime per shift. Local 1403 agreed to reduce the required number of CFO's by two (2) positions in exchange for the thirty (30) minutes of overtime per shift."

28. Since the date of the alleged "oral agreement", the County has made 38 promotions to the chief fire officer rank. Included in those promotions were a white female, four (4) black males and the remainder were white males.

29. In an act of retaliation, the County refused to make any promotions from the 2009 promotional list so that it would not have to promote Plaintiff, a black female.

30. At the time that the 2009 promotional list expired, the Fire-Rescue Department

did not have any black female CFOs and only two (2) female CFOs out of seventy-seven (77) CFO positions.

31. Plaintiff again took the promotional exam for chief fire officer in 2010 and ranked number five. The promotion list was certified in May 2010 and was valid for one year. On July 27, 2010, the County, with the knowledge and consent of the Union, promoted eight individuals to lieutenant and promoted two individuals to captain when there was an overage of ten captains and seventeen lieutenants. Plaintiff was not promoted from the chief fire officer 2010 list.

32. The Defendants misrepresented facts to Plaintiff in order to claim that there were overages at the CFO rank during the time that Plaintiff was on the 2009 and 2010 promotional lists.

33. The Defendants repeatedly manipulated the number of CFOs needed to make it appear that the Department was either in an overage situation or had no vacancies. Despite those manipulations regarding the CFO rank, the County, with the consent of the Union, continued to make promotions to other ranks when there were overages.

34. Promotional decisions were made by the Fire Chief, a white male with input from the Union.

35. In the history of Miami-Dade County, there has been only one (1) black female chief fire officer (CFO) and she has involuntarily retired.

36. Subsequent to the denial of Plaintiff's grievance, the Defendants began discussions regarding the CFO positions. The Union created three proposals to resolve the promotional grievances. In two of the proposals, Plaintiff was slated to receive her earned promotion. In the third scenario, Plaintiff was not slated to be promoted. As part of the discussions with the County, the Union was told by Fire-Rescue Department Assistant Chief Dave Downey that the County would

only allow two promotions to the rank of chief fire officer and the Union was to select the two people to be promoted. The Union, in a further act of retaliation against Plaintiff, selected two white males, Edward Erickson and John Arias. The Fire Chief promoted them to CFO.

**Count I**  
**Disparate Treatment - Race Discrimination as to both Defendants**

37. Plaintiff restates and incorporates herein the allegations in paragraphs numbered 1 through 36 above.

38. Plaintiff is a member of a protected class in that her race is Black.

39. Plaintiff's race was a motivating factor for the foregoing adverse actions, including failing to promote her in accordance with their established policies and practices in violation of Title VII.

40. The Defendants subjected Plaintiff to disparate treatment based upon her race in violation of the FCRA by failing to timely promote her in accordance with their established policies and practices.

WHEREFORE, Plaintiff requests that this Honorable Court enter judgment in her favor and against Defendant County and demands the following relief: equitable and injunctive relief, compensatory damages including, but not limited to, lost income, mental anguish, loss of dignity, prejudgment interest, attorney's fees and costs, and any and all other relief this Honorable Court deems just and appropriate.

**Count II**  
**Disparate Treatment - Gender Discrimination as to both Defendants**

41. Plaintiff restates and incorporates herein the allegations in paragraphs numbered 1 through 36.

42. Plaintiff is a member of a protected class in that her gender is female.



43. Plaintiff's gender was a motivating factor for the foregoing adverse actions, including failing to promote her in accordance with their established policies and practices in violation of the FCRA.

44. Defendants subjected the Plaintiff to disparate treatment based upon her gender in violation of the FCRA by failing to promote her in accordance with their established policies and practices.

WHEREFORE, Plaintiff requests that this Honorable Court enter judgment in her favor and against the Defendants and demands the following relief: equitable and injunctive relief, compensatory damages including, but not limited to, lost income, mental anguish, loss of dignity, prejudgment interest, attorney's fees and costs, and any and all other relief this Honorable Court deems just and appropriate.

**COUNT IV**  
**Retaliation as to both Defendants**

45. Plaintiff restates and incorporates herein the allegations in paragraphs numbered 1 through 36 above.

46. Plaintiff has opposed and complained of unlawful employment practices to both Defendants from 2004 to the present.

47. Plaintiff was not promoted because she opposed the unlawful employment practices of the Defendants in violation of the FCRA.

48. Defendants' actions are likely to dissuade a reasonable worker from filing a charge of discrimination, complaining about, objecting to and/or opposing discriminatory treatment in the workplace.

49. Defendants' actions caused the Plaintiff to suffer lost wages and benefits, loss

of enjoyment of life, humiliation, mental anguish and emotional distress.

WHEREFORE, Plaintiff requests that this Honorable Court enter judgment in her favor and against Defendants and demands the following relief: equitable and injunctive relief, compensatory damages including, but not limited to, lost income, mental anguish, loss of dignity, prejudgment interest, attorney's fees and costs, and any and all other relief this Honorable Court deems just and appropriate.

**Demand for Jury Trial**

Plaintiff demands trial by jury as to all issues so triable.

Dated this 5<sup>th</sup> day of September 2012.

Respectfully submitted,

**CYNTHIA A. EVERETT, P.A.**

Attorneys for the Plaintiff  
Dadeland Square, Suite 703  
7700 North Kendall Drive  
Miami, FL 33156  
Telephone: (305) 598-4454  
Facsimile: (305) 598-4464  
E-mail: cae@caeverett.com

By:   
Cynthia A. Everett.