

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

GARY MICHAEL HORSLEY, JR.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. Case No.
)	JURY TRIAL REQUESTED
CITY OF BIRMINGHAM AND)	
MAYOR RANDALL WOODFIN)	
(in his Official Capacity),)	
)	
Defendants.)	
)	
)	

COMPLAINT

INTRODUCTION

1. This is an action for legal and equitable relief to redress the unlawful work environment, working conditions and the imminent danger the Plaintiff Michael Horsley (hereinafter “Plaintiff”), and other former and current employees of the City of Birmingham Fire Department (“BFD”) have been forced to work in. This suit is brought to secure the protection of and to redress the deprivation of rights secured by the Occupational Safety and Health Administration

(“OSHA”) and the Environmental Protection Agency (“EPA”). Plaintiff requests a trial by jury of all triable issues.

JURISDICTION AND VENUE

2. Plaintiff brings this action pursuant to the Occupational Safety and Health Act of 1970 (OSH Act).

3. Subject matter jurisdiction of this Court is invoked Occupational Safety and Health Act of 1970 (OSH Act).

4. This action is brought within the State where the unlawful employment practices were committed, making venue proper under Occupational Safety and Health Act of 1970 (OSH Act).

5. Plaintiff’s claims are authorized by Occupational Safety and Health Act of 1970 (OSH Act) (declaratory judgments), and Fed. R. Civ. P. Rule 57.

PARTIES

6. Plaintiff Michael Horsley, (“Plaintiff”) is Caucasian male citizen of the United States and of the State of Alabama. Horsley is a resident of this Judicial District and Division.

7. Defendant City of Birmingham (“Defendant” or City”) is a local agency of the State of Alabama. At all times relevant hereto the Defendant has engaged in business in Birmingham, Alabama and has been an employer within the meaning of Occupational Safety and Health Act of 1970 (OSH Act).

8. Defendant Randall Woodfin (“Woodfin” or “Defendant”) is an African American male and the Mayor of the City of Birmingham; he is an individual that resides in Jefferson County, Alabama and is over the age of 19.

ADMINISTRATIVE PROCEDURES

9. Plaintiffs bring this action for the unlawful working conditions that the City of Birmingham forced the City of Birmingham Fire Fighters to work in.

10. This action seeks to redress unlawful work environment, working conditions and the imminent danger the Plaintiff and other former and current employees of BFD have been forced to work in, resulting from the acts of Defendants, its agents, servants, and employees committed with respect to Plaintiff’s employment.

STATEMENT OF FACTS

11. Plaintiff is a City of Birmingham Fire Fighter who has worked, and is currently assigned to work, at Station 27.

12. Plaintiff began to develop multiple health problems and suffered a decline in his health after beginning work at Station 27.

13. Plaintiff prepared a PowerPoint presentation documenting the unhealthy deteriorated living conditions at Station 27 including but not limited to asbestos exposure, mold exposure, diesel exhaust exposure, carbon particles exposure, excessive moisture, and poor ventilation.

14. Plaintiff made a complaint to the Defendants regarding the unsafe, unhealthy and, unsanitary living conditions of Station 27.

15. On June 4, 2019, after an inspection by unknown individuals Station 27 was closed and the firefighters were temporarily relocated.

16. On or about June 27, 2019 Mayor Randall Woodfin held a press conference and stated that the safety of the City of Birmingham Firefighters and ALL city employees was his first and primary concern.

17. The building was well below OSHA and EPA standards.

18. Station 27 was closed for repair/renovation.

19. On December 20, 2019 a meeting was held at Station 27, conducted by Antoinette King of the City's Occupational Health Department. In attendance were the Acting Fire Chief John Whitmire and a number of administrative staff and firefighters.

20. It was announced that the building would be occupied and functioning again starting December 23, 2019. The building is still a hazard to the health and safety of any occupants (see Plaintiff affidavit attached as Exhibit A).

21. Numerous firefighters, current and former, who have worked at Station 27 have come forward with health problems to include cancer diagnoses, lung and breathing diagnoses, as well as a host of other adverse health issues directly contributed to asbestos and black mold exposure.

22. Defendants have not been forthcoming with the with information regarding the findings of any re-inspections or plans to renovate or demolish Station 27.

COUNT ONE
NEGLIGENCE- TOXIC SUBSTANCES

23. Plaintiff fully adopts and realleges paragraphs eleven (11) through eighteen (21) as if fully set forth herein.

24. Plaintiff has been forced to work in an unsafe, unhealthy and unsanitary work environment. The Defendants placed the Plaintiff in unlawful working conditions and imminent danger in violation of the Occupational Safety and Health Act of 1970 (OSH Act).

25. Defendants knew that the toxic substances Plaintiff was subjected to in the living conditions of Station 27 could harm or even kill Plaintiff.

26. Defendants did not provide any remedial measures to remove the toxic substances from the living area of Station 27.

27. The actions of the Defendants have caused the Plaintiff to suffer financial loss, emotional distress, and the loss of the enjoyment of life.

28. The Defendants have a habit and/or practice of allowing and condoning violations Occupational Safety and Health Act of 1970 (OSH Act).

29. Plaintiff has suffered embarrassment, humiliation, shame, damage to reputation, mental distress, emotional distress, emotional and physical pain and

anguish, and will suffer lost wages as a consequence of Defendant's unlawful conduct.

30. Defendants violated the Occupational Safety and Health Act of 1970 (OSH Act) that prohibits employers from placing employees in unsafe working conditions.

31. Defendants failed to train their employees on their health and safety policies and reporting procedures.

32. Defendants' health and safety policies and reporting procedures have been ineffective.

33. Defendants' illegal working conditions have injured Plaintiffs.

34. Defendants condoned and tolerated unsafe and unhealthy working conditions, and Defendants' actions were in violation of Occupational Safety and Health Act of 1970 (OSH Act).

35. Defendants failed to take any prompt and effective action reasonably calculated to result in the prevention of and/or remedy of the unsafe and unhealthy working conditions Plaintiff has been forced to endure.

36. The actions of the Defendants for their willfulness, wantonness, negligence, recklessness, oppression, aggravation, and/or violation of the Plaintiff's rights has caused the Plaintiff to retain the services of the undersigned attorney to protect his legal rights. Consequently, the Plaintiff is entitled to recover his attorney's fees in this case from the Defendants.

37. As a result of the above actions, the Plaintiff has been, and will continue to be injured and damaged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief after a trial by jury:

A. Grant Plaintiff a declaratory judgment that the practices complained of herein are violative of the provisions of Occupational Safety and Health Act of 1970 (OSH Act);

B. Grant Plaintiff an order enjoining Defendants and all persons acting in concert with Defendants from engaging in violations of the Occupational Safety and Health Act of 1970 (OSH Act);

C. Grant Plaintiff an award of compensatory damages, including but not limited to an award for mental anguish and emotional distress;

D. Award Plaintiff costs and expenses, including an award of reasonable attorney's fees; and,

E. Award such other relief as may be appropriate.

PLAINTIFF DEMANDS A TRIAL BY STRUCK JURY ON ALL CLAIMS TRIABLE.

Respectfully Submitted,
/s/ Scott T. Morro
Scott T.Morro (ASB-4954-C30M)

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Defendant to be served via Certified Mail

EXHIBIT

A

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**GARY MICHAEL HORSLEY,)
JR.,)**

Plaintiff,)

Case No.:

vs.)

**CITY OF BIRMINGHAM AND)
MAYOR RANDALL WOODFIN)
(in his Official Capacity),)**

Defendant.

AFFIDAVIT OF GARY MICHAEL HORSLEY, JR.

COMES NOW, the affiant, Gary Michael Horsley, Jr., and declares as true and under oath that the information below is true and accurate.

1. My name is Gary Michael Horsley, Jr., I am over the age of 19 years old and I reside in Jefferson County, Alabama.
2. I Gary Michael Horsley Jr., have been employed at the city of Birmingham Fire and Rescue since 10/31/2006. Over the course of my career I have worked in three prior fire stations that had to be torn down due to unsafe working conditions. Fire station 22and Fire station 8. Fire station 27 is currently a hazard to the health of anyone working or visiting there. At all

- of the above-mentioned stations, personnel had been complaining of medical conditions and illnesses related to exposure to mold, asbestos, toxic fumes.
3. The current situation at Fire station 27 was made evident as I had been moving away from station 27 for some time after being promoted and moved to different job role at another location. Due to a staffing situation I was relocated to Fire station 27. Within the first following shifts of being back at Fire station 27, I started having health problems, that had subsided, but now had come back, (sinus infection, chest congestion and dry cough, increase in blood pressure and chest palpitations). At the breakfast table I stated” Well I am back at 27 and sick again”. Several of the on-shift fireman began telling me how sick they were and about the same type of symptoms that I was complaining about.
 4. Due to my second profession as a State Certified HVAC contractor cert#15204 I was well aware of sick building syndrome. With multiple other employees complaining of similar symptoms it prompted my interest to investigate if we had some sort of problem. My findings were documented and photographed and referenced with documents and code standards. A power point presentation and list of concerns and deficiencies

- were noted as well as life safety concerns. The documentation was passed up to my supervisor.
5. My supervisor and I created the proper documentation and sent it to safety and OHS with the City of Birmingham. We were originally met with resistance getting no relief or resolution from the current conditions at Fire Station 27
 6. After multiple attempts to rectify the situation, which I documented with City of Birmingham inter office memos and multiple telephone calls, we were advised that there would be an inspection at the station by OHS and Fire administration.
 7. The meeting was conducted by OHS, Antoinette King, and representatives from several departments. At this meet we were only able to present one concern that we had backed with proper documentation. Ms. King seemed annoyed and made a gesture in a circle motion for everyone except the fireman to meet her in front of the rescue bay. It is unknow what was discussed but everyone left and no further inspection was conducted.
 8. After the meeting we immediately started generating calls, emails and memos to the safety department, to inform them that no inspection had been conducted and we were concerned for our safety.

9. After several days a memo was sent out stating that an inspection company had been hired and would inspect Station 27 on a set date.
10. The date of the inspection was unknown and I was not sent an invitation nor expected to attend. The acting Station Captain contacted me and requested my presence. Upon arrival it was stated that I should not be at this meeting/inspection. Fire Chief Whitmer asked Captain Buaji who invited me? and his response was “he works here and I invited him.”
11. There was a brief description of how the inspection was to be conducted and who is allowed to talk or give information or direction to the inspectors.
12. It was noted that the original appearance of the inspection company did not seem up to OSHA standards or as if they were following any particular inspection standard or procedure. Documentation of the inspectors and their testing was done.
13. During the inspection The Fire Chief, Assistant Chief, and Buaji were to follow the inspectors and answer questions. At the first area of inspection the inspector stated” This is the BAD SHIT, the shit that will kill you”, which appeared to make the Chief and Assistant Chief uncomfortable. Both left very soon after, leaving the inspectors with just Buaji. After several negative comments of “this is bad, very bad” the remainder of the

- administrative staff left the building, telling the fireman “y’all know what you have to do”.
14. Later in the day the owner of the inspection company showed up and upon entering the building asked “who the fuck is that” the inspectors replied “he is the guy who works here” She told them to “ round up all their fucking shit and leave now”, which was the last we heard from that company. An internet investigation showed multiple discrepancies with the inspection company.
15. We were left at station 27 for several more shifts, even after reporting it to Safety and OHS. We defined the statements made by the inspectors and took more pictures of the alleged asbestos materials that the inspection team had disturbed.
16. After multiple calls to Safety and OSHA and other agencies and officials, we were told to leave the building immediately by the battalion chief.
17. Another company was hired to test Station 27 with obscured results.
18. Personnel have been housed at Fire Station 30 while repairs were being made to Station 27.
19. At a meeting on 12/20/19 we were informed that we were to return to Station 27 on 12/23/19.
20. Station 27 is currently occupied despite the health hazards that still exist.

21. A meeting was conducted to inform us of the repairs that have been performed. We submitted a list of **life safety issues and deficiencies** (attached). King, who ran the meeting, responded they had the questions and there was no need to ask and that they would respond.

22. I asked "Will you consider the life safety concerns before we go back?" and was told by King, and Chief Whitmer, that personnel will go back on 12/23/19.

23. It is my opinion that my health and safety, the health safety of my coworkers, and the health safety of the general public who visit Station 27 is at risk.

Further the Affiant sayeth not.

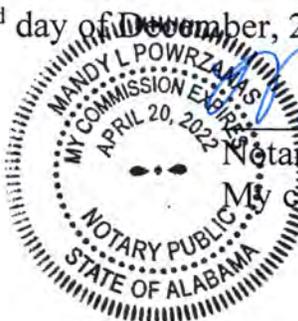

GARY MICHAEL HORSLEY, JR.

STATE OF ALABAMA)
JEFFERSON COUNTY)

ACKNOWLEDGEMENT

I, MANDY POWRZANAS a notary public in and for the state of Alabama, hereby certify that Michael Horsley whose name is signed to the forgoing affidavit, and who is known to me, acknowledged before me on this day that, being informed of the contents of the affidavit, he executed the same voluntarily on the day the same bears date.

Given under my hand this 23rd day of ~~December~~ December, 2019.


Mandy L. Powrzanas
Notary Public
My commission expires: 4/20/22

STATION 27

QUESTIONS FOR MEETING ON 12/20/2019

General

Was any permit pulled or inspection conducted by a city of Birmingham inspector? And if so who and what type of permit and inspection.

Was a certificate of occupancy given at any point previous or original?

Has any air quality testing been performed for hazardous gases or organic compounds?

HVAC

Has the HVAC system been repaired and brought up to minimum standards as defined in the (International Mechanical Code)? Was it inspected by a mechanical inspector with the City of Birmingham inspections department?

- Has the sub terrain existing ductwork been abandoned, relined or replaced? (LIFE SAFETY)
- Has the ductwork that supplies the dayroom, kitchen and office been modified, or ductwork been installed as to function per manufacture installation instructions and standards, and comply with minimum standards stated in the (International Mechanical code)? (LIFE SAFETY)
- Has the furnace been sealed to minimum standards as defined in the (International Mechanical Code) as to eliminate the entrance of toxic atmospheric condition from the mechanical room and direct ventilation from vehicle operation area, and outside contaminates? (LIFE SAFETY)
- ✓ • Has asbestos tape been removed from ductwork suppling the dormitory?
- Has the supply plenum that extends above the roof line on both the dayroom and dormitory HVAC have mechanical/permeant weather protection installed as defined in (International Mechanical and Building Code)?
- Have serviceable filter access points been installed as defined in the (International Mechanical Code)?
- Has the fresh air intake that supplies the building through the HVAC system been relocated, or altered in such a way that prevents Toxic and Hazardous gases from entering into the system and building as defined in the (International Mechanical, Building, and fuel gas code)? (LIFE SAFETY)

- Have the supply vents over the lockers been abandoned or lined with an approved duct material as to prevent direct conditioned air to ventilated directly with sheetrock?

Stove

Has the stove been properly vented with approved commercial listed and labeled venting material and connections to the outside as defined by the (International Mechanical and Fuel Gas code)?

- Is both the stove and draft hood listed and labeled as to be configured to function by the manufacture's specification? (LIFE SAFETY)
- Is sufficient make-up air supplied during operation of stove/cooktop? (LIFE SAFETY)
- Has the shelf been removed as to not block the ventilation of combustion and cooking biproducts?
- Has any permit been pulled or inspection by a City of Birmingham mechanical inspector? (when and who)

Asbestos Flue Pipe

Has the asbestos flue's been abandoned, capped in a manner as to not permit ventilation/breathing air to pass through during periods of unequal pressure or thermal layering?

Laundry Room Wall

Has the wall between the laundry room and the interior of the living/breathing space been sealed in an approved manor as to prevents the exchange of Hazardous or Toxic gases from communicating with the living/breathing space?

- Has the ice machine been relocated to a non-Hazardous location within the structure?

Bay areas of the building

Has any recommended and nfpa approved means of evacuation of Hazardous and Toxic fumes and gases been installed to accommodate all vehicles that will, and have the potential to operate form the bay on either side of the living/breathing area been installed?

- Do the filters installed on the apparatus and vehicles completely remove all biproducts of combustion from exhausting into the confined area of the bay and living/breathing area of the building? (LIFE SAFETY)
- Have all the vehicles been equipped?
- Has the reserve apparatus so been equipped?