

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
DAVID DAOUD,

Plaintiff,

-against-

YONKERS FIRE DEPARTMENT (CITY OF
YONKERS),

Defendant.
-----X

Docket No.:20-cv-6107

COMPLAINT

***PLAINTIFF DEMANDS
A TRIAL BY JURY***

Plaintiff, DAVID DAOUD, (hereinafter “Plaintiff”), by his attorneys, PHILLIPS & ASSOCIATES, Attorneys at Law, PLLC, hereby complains of the Defendant, upon information and belief, as follows:

NATURE OF THE CASE

1. Plaintiff complains pursuant to **Title VII of the Civil Rights Act of 1964**, as amended, **42 U.S.C. § 2000e et. seq.** (“Title VII”), **42 U.S.C. § 1981**, the **New York State Human Rights Law**, (**NYS Executive Law § 296, et seq.**) (“NYSHRL”), and seeks damages to redress the injuries Plaintiff has suffered as a result of being **discriminated against and retaliated against** and being subjected to a **hostile work environment** by his employer due solely to his Arab national origin.

JURISDICTION AND VENUE

2. Jurisdiction of this Court is proper under **42 U.S.C. §2000e-5(f)(3)**, and **28 U.S.C. §§1331** and 1343.
3. The Court has supplemental jurisdiction over the claims of Plaintiff brought under state law pursuant to **28 U.S.C. §1367**.
4. Venue is proper in this district in that a substantial part of the events or omissions giving

rise to the claim occurred within the Southern District of the State of New York. 28 U.S.C. § 1391(b).

PROCEDURAL PREREQUISITES

5. Plaintiff filed a charge of discrimination with the Equal Employment Opportunities Commission ("EEOC") on [date], upon which this Complaint is based.
6. Plaintiff received a Notice of Right to Sue from the EEOC, dated August 4, 2020, with respect to the instant charges of discrimination. A copy of the Notice is annexed to this Complaint.
7. This action is being commenced within 90 days of receipt of the Notice of Right to Sue.

PARTIES

8. At all relevant times herein, Plaintiff David Daoud (hereinafter "Plaintiff"), is an Arab male resident of Eastchester, New York.
9. At all relevant times herein, Plaintiff was and is a "person" and an "employee" entitled to protection as defined by state and federal laws.
10. At all relevant times herein, Defendant Yonkers Fire Department (City of Yonkers). (hereinafter "Defendant"), is a municipality located in Westchester County.
11. At all relevant times herein, Defendant "employed" fifteen and thus four or more "employees," and is thus an "employer" within the meaning of Title VII, 42 U.S.C. § 1981 and the NYSHRL.
12. At all relevant times herein, Plaintiff was an employee of Defendant.

FACTUAL ALLEGATIONS

13. In September of 2013, Defendant hired Plaintiff as a firefighter.
14. Plaintiff is an above satisfactory employee that performed his duties without any performance issues.

15. On October 12, 2018, Plaintiff was assigned to work the day tour at Yonkers Fire Station 13. While Plaintiff was having lunch with his colleagues, including two supervisors, Lts. James Callahan (“Callahan”) and Daniel Kime (“Kime”), one of his colleagues asked Plaintiff how he identified his ethnicity on the entrance exam. Plaintiff responded that he selected Caucasian as he is Middle Eastern and that was listed under Caucasian.
16. Lt. Kime, his supervisor, immediately responded, “He should have put down sand nigger.” Plaintiff was shocked and appalled by his supervisor’s use of a racist slur in front of his colleagues and another supervisor.
17. Lt. Kime went on to say words to the effect that Plaintiff should not be sensitive about his use of the slur because there are firefighters in Plaintiff’s firehouse who brag about having killed Arabs while they were in military service. Plaintiff found such comments disgusting and deeply disturbing.
18. Upon information and belief, Lt. Kime subsequently went on to relay the incidents to Plaintiff’s colleagues and supervisors in a way that misrepresented events and damaged Plaintiff’s reputation by claiming that Plaintiff had instigated an argument with Lt. Kime and had been insubordinate.
19. In a memorandum dated November 14, 2018, Plaintiff complained to Deputy Chief of Personnel Daniel Flynn (“Flynn”) about the deeply humiliating discriminatory incident.
20. On or about January 18, 2019, Callahan, told Plaintiff that Kime was merely “ribbing” him.
21. On January 19, 2019, Plaintiff had an interview with Flynn to discuss about the incident.
22. In January 2019, Firefighter Union President, Barry McGoeys (“McGoey”), shared a memorandum via text with Plaintiff in which Lt. Kime merely receive a written reprimand as discipline for his discriminatory actions.
23. An email from Rami Rabadi to Barry McGoeys in January 2019 confirmed that during a

call, Kime was eligible for retirement and would likely retire before any hearing regarding his discriminatory actions.

24. An investigation of the incident of discrimination purportedly took place in February 2019.
25. Upon information and belief, instead of investigating the incident promptly and taking appropriate disciplinary action, Defendant delayed the investigation and prolonged the disciplinary process in order to allow Kime to retire with no discipline as planned in March of 2020.
26. On August 27, 2019, Plaintiff was summoned to meet with the Inspector General of Yonkers for an alleged egregious offense on the part of Plaintiff. A complaint against Plaintiff had apparently been lodged two to three weeks before.
27. Plaintiff was told that he is being investigated for using the slang term “nigga” on a social media platform.
28. The complaint against Plaintiff was investigated by the Inspector General. This is out of the ordinary since all investigations of an employee of Defendant’s takes place internally within the Fire Department.
29. Upon information and belief, during a conversation between McGoeys and Inspector General McGrath (“McGrath”), McGrath acknowledged that investigations regarding social media are usually handled within the Fire Department. McGoeys noted the seemingly retaliatory nature of the investigation.
30. Upon information and belief, the investigation was conducted by the Inspector General rather than internally in retaliation for Plaintiff complaining about the discrimination that he had endured.
31. On or about September 10, 2019, Plaintiff complained that he is being retaliated against.
32. A grievance was filed against Fire Commissioner Robert Sweeny.

33. In a Notice of Discipline dated December 16, 2019, Plaintiff was informed that he would be suspended without pay for thirty-five days causing him and his family undue financial hardship.
34. Plaintiff received a letter, dated January 3, 2020, from the City of Yonkers Department of Human Resources stating that the investigation of Plaintiff's grievance complaint against Fire Commissioner Robert Sweeny had been completed and deemed unfounded.
35. The use of a racist slur and comments created a hostile work environment for Plaintiff.
36. After Plaintiff complained about the hostile work environment, Plaintiff experienced retaliation.
37. Plaintiff found it extremely difficult to go to work every day while anticipating a hostile environment and knowing that any racial animus directed toward him would go unpunished.
38. Plaintiff felt demoralized by the fact that a supervisor could direct a humiliating and degrading racist slur toward him with impunity.
39. Plaintiff became increasingly anxious and depressed. The use of a racist slur, lack of discipline for its use, and retaliation in the form of a suspiciously timed investigation all contributed to his extreme stress.
40. The effects of the discrimination and retaliation that Plaintiff suffered linger and continue to negatively affect his health and mental well-being.
41. Defendant's harassment was sufficiently severe and/ or pervasive to alter the conditions of Plaintiff's employment and create an abusive working environment.
42. Defendant's hostile conduct occurred because of Plaintiff's national origin.
43. As a result of Defendant's actions, Plaintiff felt humiliated, degraded, victimized, embarrassed and emotionally distressed.

- 44. As a result of the Defendant's discriminatory and intolerable treatment, Plaintiff suffered severe emotional distress.
- 45. As a result of the acts and conduct complained of herein, Plaintiff has suffered, and will continue to suffer emotional pain, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses.
- 46. Defendant's actions and conduct were intentional and intended to harm Plaintiff.
- 47. As Defendant's conduct has been malicious, willful, outrageous, and conducted with full knowledge of the law, Plaintiff demands punitive damages as against Defendant.

**AS A FIRST CAUSE OF ACTION FOR DISCRIMINATION
VIOLATIONS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**

- 48. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.
- 49. Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e-2(a)(1) provides, in pertinent part, that:

It shall be an unlawful employment practice for an employer... 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*.

- 50. Defendant engaged in unlawful employment practices prohibited by 42 U.S.C. §2000e *et seq.*, by discriminating against Plaintiff solely based on his national origin.
- 51. Defendant failed to protect Plaintiff from the hostile work environment he faced and inadequately investigated his complaints of discrimination and retaliation.
- 52. As a further proximate result of Defendant's actions, Plaintiff has suffered and continues to suffer impairment and damage to Plaintiff's good name and reputation.
- 53. As a further proximate result of Defendant's actions, Plaintiff has suffered and continues to suffer severe and lasting embarrassment, humiliation and anguish, and other incidental

and consequential damages and expenses.

54. The conduct of Defendant was outrageous and malicious, was intended to injure plaintiff, and was done with reckless indifference to Plaintiff's protected civil rights, entitling Plaintiff to an award of punitive damages.

**AS A SECOND CAUSE OF ACTION
FOR RETALIATION UNDER TITLE VII**

55. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.
56. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-3(a) provides that it shall be unlawful employment practice for an employer: "to discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this subchapter."
57. Defendant engaged in an unlawful discriminatory practice by retaliating and otherwise discriminating against Plaintiff because of Plaintiff's opposition to unlawful employment practices.
58. As a further proximate result of Defendant's actions, Plaintiff has suffered and continues to suffer impairment and damage to Plaintiff's good name, lasting embarrassment, humiliation and anguish, and other incidental and consequential damages and expenses.
59. The conduct of Defendant was outrageous, was done in a deliberate, callous, malicious, and oppressive manner intended to injure Plaintiff, and was done in conscious disregard of Plaintiff's rights. Plaintiff is therefore also entitled to an award of punitive damages.
60. As a result of the foregoing, Plaintiff has lost wages, benefits, and promotional opportunities. Furthermore, Plaintiff has suffered mental anguish, emotional distress and

loss of enjoyment of life and has incurred damages thereby.

**AS A THIRD CAUSE OF ACTION
FOR DISCRIMINATION UNDER 42 U.S.C. § 1981 (As Amended)**

61. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.
62. 42 U.S.C. § 1981(a) states in relevant part as follows:
All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.
63. Defendant intentionally discriminated against Plaintiff in violation of 42 U.S.C. § 1981 on account of his Arab race.
64. As a further proximate result of Defendant's actions, Plaintiff has suffered and continues to suffer severe and lasting embarrassment, humiliation and anguish, and other incidental and consequential damages and expenses.
65. The conduct of defendants was outrageous and malicious, was intended to injure Plaintiff, and was done with conscious disregard of Plaintiff's civil rights, entitling plaintiff to an award of punitive damages.

**AS A FOURTH CAUSE OF ACTION
FOR RETALIATION UNDER 42 U.S.C. §1981 (As Amended)**

66. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.
67. By the acts and practices described above, Defendant retaliated against Plaintiff for his opposition to and complaints of unlawful discrimination in violation of 42 U.S.C. §1981.
68. As a further proximate result of Defendant's actions, Plaintiff has suffered and continues to suffer impairment and damage to Plaintiff's good name, lasting embarrassment,

humiliation and anguish, and other incidental and consequential damages and expenses.

69. The conduct of Defendant was outrageous, was done in a deliberate, callous, malicious, and oppressive manner intended to injure Plaintiff, and was done in conscious disregard of Plaintiff's rights. Plaintiff is therefore also entitled to an award of punitive damages.
70. As a result of the foregoing, Plaintiff has lost wages, benefits, and promotional opportunities. Furthermore, Plaintiff has suffered mental anguish, emotional distress and loss of enjoyment of life and has incurred damages thereby.

**AS A FIFTH CAUSE OF ACTION FOR DISCRIMINATION
UNDER NEW YORK STATE EXECUTIVE LAW**

71. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.
72. New York State Executive Law §296 provides that it shall be an unlawful discriminatory practice: "For an employer or licensing agency, because of an individual's . . . race, creed, color, *national origin*, ... to discriminate against such individual in compensation or in terms, conditions or privileges of employment."
73. Defendant subjected Plaintiff to disparate treatment, verbal abuse, and hostile work environment during his employment.
74. Further, Defendant ignored and did nothing to protect Plaintiff from the racial animus and discriminatory hostile work environment that he confronted.
75. Defendant's disparate treatment of Plaintiff on the basis of his national origin, was in violation of the New York State Human Rights Law.
76. As a result of the foregoing, Plaintiff has lost promotional opportunities.
77. As a result of the foregoing, Plaintiff has suffered mental anguish, emotional distress and loss of enjoyment of life and has incurred damages thereby.

**AS A SIXTH CAUSE OF ACTION FOR RETALIATION
UNDER NEW YORK STATE EXECUTIVE LAW**

78. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.
79. New York State Executive Law §296(7) provides that it shall be an unlawful discriminatory practice: “For any person engaged in any activity to which this section applies to retaliate or discriminate against any person because he has opposed any practices forbidden under this article.”
80. Defendant engaged in an unlawful discriminatory practice by retaliating and otherwise discriminating against Plaintiff because of his opposition to unlawful employment practices.
81. Following Plaintiff’s complaints, Plaintiff was subjected to a hostile work environment, adverse employment actions, and other retaliatory behavior.
82. Defendant acted intentionally, with malice or with reckless disregard for Plaintiff’s rights, proximately causing Plaintiff mental anguish, pain and suffering, emotional distress.

JURY DEMAND

83. Plaintiff requests a jury trial on all issues to be tried.

WHEREFORE, Plaintiff respectfully requests a judgment against Defendant:

- A. Declaring that Defendant engaged in unlawful employment practices prohibited by Title VII, Section 1981 and NYSHRL in that Defendant discriminated against Plaintiff on the basis of his race and/or national origin and retaliated against Plaintiff by subjecting Plaintiff to a hostile work environment for engaging in protected activity;
- B. Awarding damages to Plaintiff for all damages resulting from Defendant’s unlawful discrimination and retaliation and to otherwise make him whole for any losses suffered as a result of such unlawful employment practices;

- C. Awarding Plaintiff compensatory damages for mental, emotional and physical injury, emotional distress, pain and suffering and injury to his reputation in an amount to be proven;
- D. Awarding Plaintiff punitive damages;
- E. Awarding Plaintiff attorneys' fees, costs, and expenses incurred in the prosecution of the action; and
- F. Awarding Plaintiff such other and further relief as the Court may deem equitable, just and proper to remedy Defendant's unlawful employment practices.

Dated: New York, New York
August 5, 2020

**PHILLIPS & ASSOCIATES,
ATTORNEYS AT LAW, PLLC**

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EXHIBIT A



U.S. Department of Justice

Civil Rights Division

NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

VIA EMAIL

950 Pennsylvania Avenue, N.W.

Karen Ferguson, EMP, PHB, Room 4701

Washington, DC 20530

August 04, 2020

Mr. David Daoud
c/o Marjorie Mesidor, Esquire
Law Offices of Phillips & Assocs.
45 Broadway, Suite 620
New York, NY 10006

Re: EEOC Charge Against Yonkers Fire Dept.
No. 520201905913

Dear Mr. Daoud:

Because you filed the above charge with the Equal Employment Opportunity Commission, and more than 180 days have elapsed since the date the Commission assumed jurisdiction over the charge, and no suit based thereon has been filed by this Department, and because you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., against the above-named respondent.

If you choose to commence a civil action, such suit must be filed in the appropriate Court within 90 days of your receipt of this Notice.

The investigative file pertaining to your case is located in the EEOC New York District Office, New York, NY.

This Notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your case is meritorious.

Sincerely,

Eric S. Dreiband
Assistant Attorney General
Civil Rights Division

by /s/ Karen L. Ferguson
Karen L. Ferguson
Supervisory Civil Rights Analyst
Employment Litigation Section

cc: New York District Office, EEOC
Yonkers Fire Dept.