

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT DEPT.
DOCKET NO.:

LEE GILLIAM)
Plaintiff,)
v.)
CITY OF NEWTON)
and CITY OF NEWTON FIRE DEPARTMENT)
Defendants.)
_____)

RECEIVED

6/14/2021 JP

COMPLAINT AND JURY DEMAND

PARTIES

1. The Plaintiff, Lee Gilliam (hereafter, "Gilliam"), currently resides at 2085 Commonwealth Ave., Newton, Massachusetts.
2. The Defendant, City of Newton and the City of Newton Fire Department (hereafter collectively, "the Department"), are located in Newton, Massachusetts.

FACTS COMMON TO ALL COUNTS

3. Gilliam began working for the City as a firefighter on April 12, 2004.
4. Gilliam is an African-American male.
5. Upon information and belief, the Department employs around ten African American employees, including Gilliam.
6. This racial imbalance and failure to diversify has fostered and perpetuated a hostile environment where Caucasian firefighters generally feel free to make insensitive and degrading comments concerning African Americans without consequence. Many

individuals in charge within the Department foster these racist attitudes and ideals. For example, one individual, recently promoted to Assistant Chief, shows off his racist tattoos (stating “Pride” and the “Betsey Ross Flag”).

7. Throughout his employment, Gilliam and the other firefighters on duty would watch news on the television. On several occasions, when a crime story was featured, firefighters would comment “[o]f course, it’s a black guy.” When Gilliam spoke up he was called “princess” and would be told by the others “not to be so sensitive.”
8. In 2008, Lt. James Trudo (hereafter, Lt. Trudo), a Caucasian male who holds a position of power over Gilliam, used the word ‘N-word’ with the intent of degrading Gilliam. This greatly upset Gilliam.
9. Gilliam discussed this matter with Lt. Trudo and expressed that he was upset by Lt. Trudo’s use of the racially charged, derogatory slur. In response, Lt. Trudo said that Gilliam “shouldn’t be upset” about the use of the word as it is used by African Americans in rap songs and in reference to one another.
10. This matter was investigated by the Fire Department and Lt. Trudo was found to have used the racial slur. As a result of this encounter, *Gilliam* was transferred to a different unit and was told that he would not have to work with Lt. Trudo any longer.
11. In October 2012, Gilliam was called a “‘House’ N-word’ and “cornbread” by a fellow firefighter. After an investigation, The City dismissed this firefighter, but failed to implement any substantive change concerning racially insensitive comments that permeated the firehouses.
12. In March 2013, Gilliam was transferred units for a second time. Gilliam was told he was being removed from his unit and placed in a new one because Lt. Trudo was being

transferred to the unit Gilliam was then assigned to. In other words, the Department uprooted Gilliam to place Lt. Trudo (who admittedly used the “N-word” in the past) in *his* preferred position.

13. In 2017, despite assurances from the Fire Chief that Gilliam would not have to work with Lt. Trudo, Gilliam was again placed in a unit where he came into frequent contact with Lt. Trudo.
14. On June 6, 2018, Gilliam applied for a Rescue 1 position. With fourteen years of experience and extensive outside training Gilliam was clearly qualified and, if chosen, the position would have allowed Gilliam to utilize his skill set.
15. Gilliam did not receive the position. Instead the position was given to a Caucasian firefighter with significantly less experience, training and skills than Gilliam possessed.
16. After applying to the Rescue 1 position, Gilliam learned that Lt. Trudo was being placed in charge of Rescue 1.
17. It later became known that while Assistant Chief Lucchetti was heavily involved in the hiring decisions for Rescue 1, it was Lt. Trudo who made the final recommendation.
18. On June 15, 2018 after the decision had been made, Gilliam asked Lt. Trudo why he was not selected for the Rescue 1 position when he was clearly more qualified than the chosen applicant. Instead of privately discussing the matter with Gilliam, Lt. Trudo confronted him in front of the entire firehouse. Lt. Trudo told Gilliam that he “lacked intelligence.” As Gilliam walked by Lt. Trudo, he called him a “monkey” under his breath and then went on to publicly belittle him further in front of his supervisors and colleagues.

19. On June 15, 2018, when it apparently dawned on Lt. Trudo's that the comments he made might have been offensive to Gilliam, Lt. Trudo apologized to Gilliam over text message. The message read, "Hey buddy [j]ust want you to know that was a dick thing for me to say this morning and I know you're upset about not getting on the Rescue and I should have thought about that before I said something stupid like that and I want you to know that I understand why you're pissed and rightly so."
20. In June 2018, members of the Department began a discussion about Confederate monuments and flags that had been vandalized. Several of the firefighters, including Lt. Trudo, became upset about Confederate flags being taken down. These individuals claimed that the monuments and flags were an "important part of history," and that there was no reason to change things. These individuals also claimed that the "situation for blacks had progressed enough since slavery." All comments were knowingly made in the presence of Gilliam.
21. These racially insensitive, overtly hateful comments shocked Gilliam. As a result, he began to suffer greatly from emotional distress.
22. On June 20, 2018, Gilliam went to the Chief of the Fire Department to discuss this repeated harassment and inappropriate racial comments and discussions. The Chief expressed that he thought it was best for *Gilliam* to transfer and initiated swift transfer proceedings. This marked the third time that Gilliam was transferred due to the racial attitudes of Lt. Trudo and others within the Department.
23. Gilliam agreed to the transfer but only gave his consent because he felt that he had no other choice given the pervasive racism in the Newton Fire Department.

24. After this transfer, Gilliam continued to experience hostility from the other Caucasian firefighters due to his race and because of the complaints he had raised about the racial insensitivity of Lt. Trudo and the other firefighters. For example, Gilliam was present at a dumpster fire and several firefighters asked Gilliam if it would upset him if they called it “White Trash.”
25. Also on June 20, 2018, Gilliam contacted Karen Glasgow, Director of Human Resources to report these repeated acts of hostility and discrimination.
26. As 2018 progressed, Gilliam found his emotional distress increasing in severity as he continued to be the subject of racial slurs, demeaning comments and racial insensitivities. His afflictions included anxiety, depression, rage, humiliation, and loss of self-esteem. This stress eventually led to Gilliam suffering a breakdown. Subsequently, Gilliam was hospitalized in October 2018 for three weeks.
27. On October 3, 2019, Gilliam’s confidential medical information was made public by Captain D’Agostino who printed and distributed Gilliam’s confidential medical records throughout the Department. This action was done to continue to embarrass and humiliate Gilliam because of his complaints concerning racial issues in the Fire Department.
28. On October 26, 2019, Gilliam inquired as to how the human resources department was going to handle the incident because action had been taken. In response, a general order was released reprimanding Captain D’Agostino but no further disciplinary measures were taken.
29. In January 2020, Gilliam submitted an Injury Report to the Department requesting “Injured on Duty Leave” for ailments caused by the discrimination he had endured and in relation to the breakdown he suffered. Included in his request was a letter written by

Gilliam's therapist recommending that Gilliam take time away from the Department to tend to his health.

30. Assistant Chief Michael Smith denied this request stating that Gilliam's doctor did not use precise wording required by M.G.L c. 41, sec. 111F, Gilliam's injuries did not stem from the course of employment, and that the injury was not causally related to a work incident.
31. The racial comments made in front of Gilliam continued through 2019 and 2020. On May 31, 2020, while working with Gilliam, Lt. Matt Zagami made several remarks about the Black Lives Matter movement (hereafter, "BLM") in an attempt to justify the death of George Floyd. Lt. Zagami stated that the looting, which had occurred during certain BLM protests, was a more important issue than the death of George Floyd because looting had economic impacts whereas George Floyd was "resisting the police" and thus deserved to be killed.
32. On June 1, 2020, mid-way through a shift with Gilliam, Lt. Zagami told Gilliam that his family "did not own slaves" and "made it" in America because they did not play the "victim" card in the way that he perceives the African American community to do.
33. On June 5, 2020, while seated at the kitchen table at the Department during a shift change, Firefighter Peter Leone told Gilliam that he and his father were prepared, possessed fire arms and would be waiting on their porch in case they felt threatened by "those looters."
34. In the evening of June 13, 2020 while referencing the death of Eric Garner who was killed by New York City Police, Lt. Zagami again justified the actions of law enforcement officials by stating "[h]e shouldn't have been selling loose cigarettes."

35. Also in response to the current BLM protests and heightened public attention, several firefighters erased a “Black Lives Matter” chalk drawing which had been drawn on the sidewalk outside of the Department.
36. Additionally in 2020, the Department promoted Mike Caddell to Deputy Chief, a man who is known to have multiple tattoos of symbols of hate including the Betsey Ross Flag on his left arm and the word “Pride” emblazoned across his stomach. A picture of Caddell had been circulated, which showed him shirtless so these tattoos were visible.
37. These facts clearly indicate a severe pattern of racism and racist individuals that has infiltrated the Newton Fire Department at all levels, including Lieutenants and Chiefs. This tolerance of racial insensitivity and bias has not only been tolerated but has been perpetuated by firefighters, lieutenants, and chiefs alike for over a decade and unfortunately at the expense of Gilliam’s health and wellbeing.
38. To this day Gilliam continues to suffer from severe emotional distress, is being treated with a variety of prescription medications and he is seeking ongoing out-patient treatment as a result of the repeated harassment and intolerance he has been subjected to.

COUNT I - DISPARATE TREATMENT

UNDER M.G.L. c. 151B

39. Gilliam hereby realleges and reincorporates paragraphs 1-38 herein.
40. Gilliam is an African-American man.
41. Gilliam has worked for the Newton Fire Department from 2004 to the present. Since beginning his time with the department, Gilliam has not been disciplined or sanctioned in regards to his job performance.

42. Gilliam applied for the Rescue 1 position, a job that he was qualified for and knowledgeable about. The job was given to a Caucasian man with only one year of experience and no additional training.
43. Gilliam was deliberately denied the Rescue 1 position despite his fourteen years of experience and additional training. These factors, when considered in concert and compared to those of the Caucasian male who was chosen for the job, indicate a clear, unfair and unreasoned difference in treatment.
44. Lt. Trudo was part of the decision making for the position. This was the same individual that was previously disciplined for using a racial slur in and, despite being subject to discipline in 2008, continued to make racially insensitive comments.
45. As a result, Gilliam has been harmed and suffered damages.
46. Wherefore, Gilliam demands judgement against the Department for their disparate treatment of him throughout the course of his employment.

COUNT II - RETALIATION

47. Gilliam hereby realleges and reincorporates paragraphs 1-46 herein.
48. Gilliam, an African American male, has worked for the Newton Fire Department for over seventeen years.
49. Gilliam complained about the racial insensitivities, derogatory slurs and racist comments made by his supervisors and fellow firefighters.
50. Immediately after complaining and speaking up about racial matters, Gilliam applied for a job that he was clearly qualified for. His application was denied and the position was given to a lesser qualified Caucasian male.

51. Gilliam was asked if he wanted a transfer. The Newton Fire Department sought to transfer him, rather than to address the racial issues.
52. As a result, Gilliam has been harmed and has suffered damages as this position would have allowed him to advance in his career.
53. Wherefore, the Gilliam demands judgment against the Department for retaliation.

COUNT III - HOSTILE WORK ENVIRONMENT

UNDER M.G.L. c. 151B

54. Gilliam hereby realleges and reincorporates paragraphs 1-53 herein.
55. Gilliam was the target of derogatory slurs and hate speech directed at him because of his African American heritage.
56. Gilliam has been subjected to repeated comments regarding African American, the Black Lives Matter Movement, and about various hot button racial incidents such as the murders of George Floyd and Eric Garner.
57. As a result of these comments and these racial attitudes, the Newton Fire Department's solution was to suggest to Gilliam that he transfer, change his work schedule, the people he was worked with and the supervisor that he reported to.
58. In addition, the pervasive comments made resulted in Gilliam suffering severe emotional distress that he was ultimately hospitalized for.
59. Lt. Trudo, while acting in his role as supervisor, not only made insensitive and racially charged comments that perpetuated a cycle of pervasive racism throughout the entire department but he also publicly ridiculed and humiliated Gilliam by insulting his intelligence and calling him derogatory names such as "monkey."

60. Racial hate and racial comments made by members of the Newton Fire Department are regular, consistent and pervade the Newton Fire Department and have reached its upper levels. This racial hate and comments were meant to humiliate and stigmatize Gilliam.
61. As a result, Gilliam has suffered emotional distress, been greatly harmed and suffered damages.
62. Wherefore, Gilliam demands judgment against the Defendant for his hostile work environment claims.

WHEREFORE, Plaintiff prays for the following relief:

- a. The Court award him judgment for money damages, emotional distress damages, punitive damages, attorney's fees and costs, and interest under Counts I-III.
- b. The Court awards the Plaintiff all further relief as the Court deems appropriate, according to justice and equity.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial as to all issues for which jury trials may be held.

Respectfully submitted,
Plaintiff by his attorney,



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6/17/21