

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RANCE A. CAMARENA

Plaintiff,

-against-

THE CITY OF NEW YORK; STEPHEN CAPASSO, as
Deputy Inspector, Former Commanding Officer, Police
Service Area No.: 5; GEORGE MISFUD, as Captain,
Former Special Operations Lieutenant and Acting Integrity
Control Officer, Police Service Area No.: 5; GEORGE
HELLMER; as Sergeant, Police Service Area No.: 5;
DONALD CUSACK, as Captain, as Commanding Officer,
Housing Bureau Investigations Unit; and DARYL MILLER,
as Lieutenant, Housing Bureau Investigations Unit, each being
sued individually and in their official capacities as employees
of Defendant THE CITY OF NEW YORK

Defendants'
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The Plaintiff RANCE A. CAMARENA by his attorney The Sanders Firm, P.C., as and for
his Complaint against Defendants' THE CITY OF NEW YORK; STEPHEN CAPASSO;
GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER,
respectfully set forth and allege that:

INTRODUCTION

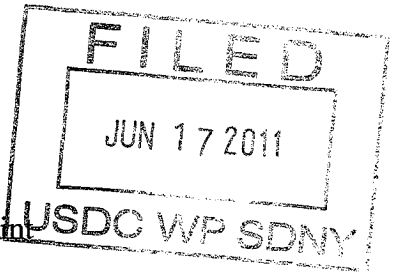
This is an action for equitable relief and money damages on behalf of the Plaintiff RANCE
A. CAMARENA, (hereinafter referred to as "Plaintiff") who was and is being deprived of his
statutory rights as an employee as a result of Defendants' THE CITY OF NEW YORK; STEPHEN
CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL
MILLER'S race discrimination.

Complaint

Jury Trial Demand

'11 CIV - 4127

JUDGE JONES



JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to 18 U.S.C. § 1965, 28 U.S.C. §§ 1331, 1343 and 2202 to secure protection of and to redress deprivation of rights secured by:

- a. the Civil Rights Act of 1866, 42 U.S.C. § 1981, providing for the protection of all person's right to make and enforce contracts under the color of State Law; and
- b. the Civil Rights Act of 1871, 42 U.S.C. § 1983, providing for the protection of all persons in his civil rights and the redress of deprivation of rights under color of law.

2. The unlawful employment practices, violations of Plaintiff's civil rights complained of herein were committed within the Southern District of New York.

3. The pendent jurisdiction of the federal district court is invoked with respect to the Plaintiff's claims under New York State Executive Law § 296; and New York City Administrative Code § 8-107, pursuant to 28 U.S.C. 1367, because the entire action before the court comprises one constitutional and civil rights case, and the claims arise out of the same common nucleus of facts and are such that the Plaintiff would ordinarily be expected to try them in one judicial proceeding.

PROCEDURAL REQUIREMENTS

4. Plaintiff has filed suit with this Court within the applicable statute of limitations period.

5. Plaintiff is not required to exhaust any administrative procedures prior to suit under the Civil Rights Act of 1866 or the Civil Rights Act of 1871.

PLAINTIFF

6. Plaintiff RANCE A. CAMARENA is a male citizen of the United States of America

and is over twenty-one (21) years of age, a resident of New York County and is an employee of Defendant THE CITY OF NEW YORK (hereinafter referred to as the “CITY”) more specifically the Police Department City of New York (hereinafter referred to as the “NYPD”). For the purposes of this litigation, Defendant CITY may be identified interchangeably using CITY or NYPD to identify the employer which is the CITY.

DEFENDANTS’

7. Defendant CITY was and is a municipal corporation organized and existing under and by virtue of the law of the State of New York, and at all relevant times Plaintiff’s employer, with its central offices in the county of New York, and diverse other offices and facilities throughout the world.

8. Defendants’ STEPHEN CAPASSO, as Deputy Inspector, Former Commanding Officer, Police Service Area No.: 5; GEORGE MISFUD, as Captain, Former Special Operations Lieutenant and Acting Integrity Control Officer, Police Service Area No.: 5; GEORGE HELLER, as Sergeant, Police Service Area No.: 5; DONALD CUSACK, as Captain, as Commanding Officer, Housing Bureau Investigations Unit; and DARYL MILLER, as Lieutenant, Housing Bureau Investigations Unit.

BACKGROUND

9. Plaintiff is a Black Hispanic male employee of the Police Department City of New York (“NYPD”).

10. Plaintiff was appointed to the NYPD on or about March 1, 2000, as a police officer.

11. Plaintiff alleges that on or about November 1, 2006, he was promoted to Sergeant.

12. Plaintiff alleges that shortly thereafter, he was assigned to the Basic Management

Operations Course (“BMOC”).

13. Plaintiff alleges that on or about December 4, 2006, he was assigned to Police Service Area No.: 5.

14. Plaintiff alleges that on or about September 3, 2007, Defendant GEORGE MIFSUD (Caucasian Male) told Defendant STEPHEN CAPASSO (Caucasian Male) that he *believed* that Plaintiff has submitted a request for overtime that he did not earn.

15. Plaintiff alleges that Defendants’ STEPHEN CAPASSO and GEORGE MISFUD began investigating his requests for payment of overtime.

16. Plaintiff alleges that the custom and practice in Police Service Area No.: 5, was every Sergeant was entitled to 20-30 minutes of pre-tour overtime for completing administrative tasks such as adjusting roll calls, etc.

17. Plaintiff alleges that every Sergeant assigned to Police Service Area No.: 5, followed this custom and practice.

18. Plaintiff alleges that this practice was taught to them by Defendant GEORGE HELLMER (Caucasian Male).

19. Plaintiff alleges that Defendant STEPHEN CAPASSO through Defendant GEORGE MISFUD began issuing numerous Command Disciplines against him without notifying him, then “warehousing” them by not adjudicating them within 60 days as defined by Department policy.

20. Plaintiff alleges that on or about May 1, 2008, he was placed by “Modified Assignment” one month before becoming a tenured Sergeant by Defendant DARYL MILLER (African-American Male) under the authority of Defendant DONALD CUSACK (Caucasian Male).

21. Plaintiff alleges that Defendants' STEPHEN CAPASSO; GEORGE MISFUD; DONALD CUSACK and DARYL MILLER knew that modifying him before he finished probation would ensure that he is demoted without a formal hearing.

22. Plaintiff alleges that on or about June 27, 2008, he was served with Charges and Specifications alleging numerous counts of misconduct.

23. Plaintiff alleges that in or around September 2008, he was demoted to Police Officer and transferred to the 48th Precinct.

24. Plaintiff alleges that on or about March 8, 2010, the Department Trial against him commenced to adjudicate the Charges and Specifications.

25. Plaintiff alleges that on or about March 9, 2010, the Department Trial against him concluded.

26. Plaintiff alleges that on or about June 25, 2010, Trial Commissioner Robert W. Vinal recommended that he be DISMISSED from the New York City Police Department but that his dismissal be held in abeyance for a period of one year pursuant to Section 14-115(d) of the Administrative Code of New York City, during which time he is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further hearings.

27. Plaintiff alleges that it was further recommended that he forfeit 30 vacation days.

28. Plaintiff alleges that on or about December 20, 2010, Police Commissioner Raymond W. Kelly accepted and approved Trial Commissioner Robert W. Vinal's recommendations.

29. Plaintiff alleges that since May 1, 2008, to this day, he remains on "Modified Duty" with no prospect of ever being returned back to "Full Duty" status.

30. Plaintiff alleges that in his current status, he will remain on probation in jeopardy

of losing his pension rights.

31. Plaintiff alleges that in his current status, his job opportunities are extremely limited.

32. Plaintiff alleges that since September 3, 2007, Defendants' STEPHEN CAPASSO; GEORGE MISFUD; and GEORGE HELLMER have misled the Department about the custom and practice of pre-tour overtime as well as the manner in which minor violations were adjudicated.

33. Plaintiff alleges that Defendants' STEPHEN CAPASSO; GEORGE MISFUD and GEORGE HELLMER provided false and misleading statements throughout the investigation and the Department Trial to protect the other police supervisors who are primarily Caucasian Males.

34. Plaintiff alleges that Defendants' DONALD CUSACK and DARYL MILLER would have known about their false and misleading testimony if they had performed an "objective investigation."

35. Plaintiff alleges that Defendants' DONALD CUSACK and DARYL MILLER failed to perform an "objective investigation" because of his race.

36. Plaintiff alleges that based upon the conduct of Defendants' STEPHEN CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER he was demoted to police officer.

37. Plaintiff alleges that based upon the conduct of Defendants' STEPHEN CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER he was convicted in the Trial Room.

38. Plaintiff alleges that based on the foregoing, that he has been discriminated against by Defendants' CITY; STEPHEN CAPASSO; GEORGE MISFUD; GEORGE

HELLMER; DONALD CUSACK and DARYL MILLER due to his race.

VIOLATIONS AND CLAIMS ALLEGED

**COUNT I
RACE DISCRIMINATION
IN VIOLATION OF
THE CIVIL RIGHTS ACT OF 1866, 42 U.S.C. § 1981**

39. Plaintiff re-alleges Paragraphs 1 through 38 and incorporates them by reference as Paragraphs 1 through 38 of Count I of this Complaint.

40. Plaintiff alleges that by the aforesaid discriminatory acts and omissions of Defendants' CITY; STEPHEN CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER acting individually and in their official capacities as public officials of Defendant CITY interfered with his right to enforce contracts under the color of state law because of his race.

41. Plaintiff alleges that the purpose of Defendants' CITY; STEPHEN CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER in so acting was to prevent him, through economic and psychological intimidation, from seeking the equal protection of the laws.

42. Plaintiff alleges that pursuant to their conduct, Defendants' CITY; STEPHEN CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER acted to deprive him of his civil rights, by repeated and insidious acts of harassment, intimidation, bad faith and threats.

43. Plaintiff alleges that as a result of the aforesaid acts, depriving him of his civil rights, he suffered mental anguish, emotional distress, and loss of employment opportunities.

**COUNT II
RACE DISCRIMINATION
IN VIOLATION OF
THE CIVIL RIGHTS ACT OF 1871, 42 U.S.C. § 1983**

44. Plaintiff re-alleges Paragraphs 1 through 43 and incorporates them by reference as Paragraphs 1 through 43 of Count II of this Complaint.

45. Plaintiff alleges that Defendants' CITY; STEPHEN CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER under color of law, personally interfered with and deprived him of his constitutional rights, including the rights to petition his government for redress of his grievances and to be free from deprivation of life, liberty, and property without due process of law.

46. Plaintiff alleges that Defendants' CITY; STEPHEN CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER acting individually and in their official capacities as a public officials of Defendant CITY under color of law, and having been fully advised that he was being deprived of his constitutional rights, either acted in a concerted, malicious intentional pattern to further discriminate against him, or knowing such discrimination was taking place, knowingly omitted to act to protect him from continuing deprivations of his rights.

47. Plaintiff alleges that Defendants' CITY; STEPHEN CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER in acting to deprive him of his rights, acted intentionally, knowingly, willfully, and with gross disregard of his rights.

48. Plaintiff alleges that Defendants' CITY; STEPHEN CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER acted in an outrageous and systematic pattern of discrimination, oppression, bad faith and cover-up, directed

at him and continuing from in or around September 3, 2007, until this day.

49. Plaintiff alleges that as a result of the acts of Defendants' CITY; STEPHEN CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER under color of law, he suffered emotional distress, monetary damage, and incurred medical and legal expenses, and out of pocket expenses for telephone, postage, and other costs of pursuing the claims herein.

**COUNT III
ABUSE OF AUTHORITY
IN VIOLATION OF
THE CIVIL RIGHTS ACT OF 1871, 42 U.S.C. § 1983**

50. Plaintiff re-alleges Paragraphs 1 through 49 and incorporates them by reference as Paragraphs 1 through 49 of Count III of this Complaint.

51. Plaintiff alleges that Defendants' CITY; STEPHEN CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER under color of law, personally interfered with and deprived him of his constitutional rights, including the rights to petition his government for redress of his grievances and to be free from deprivation of life, liberty, and property without due process of law.

52. Plaintiff alleges that Defendants' CITY; STEPHEN CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER acting individually and in their official capacities as a public officials of Defendant CITY under color of law, and having been fully advised that he was being deprived of his constitutional rights, either acted in a concerted, malicious intentional pattern to further discriminate against him, or knowing such discrimination was taking place, knowingly omitted to act to protect him from continuing deprivations of his rights.

53. Plaintiff alleges that Defendants' CITY; STEPHEN CAPASSO; GEORGE

MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER in acting to deprive him of his rights, acted intentionally, knowingly, willfully, and with gross disregard of his rights.

54. Plaintiff alleges that Defendants' CITY; STEPHEN CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER acted in an outrageous and systematic pattern of discrimination, oppression, bad faith and cover-up, directed at him and continuing from in or around September 3, 2007, until this day.

55. Plaintiff alleges that as a result of the acts of Defendants' CITY; STEPHEN CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER under color of law, he suffered emotional distress, monetary damage, and incurred medical and legal expenses, and out of pocket expenses for telephone, postage, and other costs of pursuing the claims herein.

**COUNT IV
RACE DISCRIMINATION
IN VIOLATION OF
NEW YORK STATE EXECUTIVE LAW § 296**

56. Plaintiff re-alleges Paragraphs 1 through 55 and incorporates them by reference as Paragraphs 1 through 55 of Count IV of this Complaint.

57. Plaintiff alleges that New York State Executive Law § 296, makes it unlawful to discriminate against any individual in the terms, conditions, or privileges of employment because of their race.

58. Plaintiff alleges that Defendants' CITY; STEPHEN CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER discriminated against him because of his race.

59. Plaintiff alleges that as a direct and proximate result of the unlawful employment

practices of Defendants' CITY; STEPHEN CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER, he suffered the indignity of race discrimination and great humiliation.

60. Plaintiff alleges that Defendants' CITY; STEPHEN CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER'S violations caused him mental anguish, emotional distress, and loss of employment opportunities.

**COUNT V
RACE DISCRIMINATION
IN VIOLATION OF
NEW YORK CITY ADMINISTRATIVE CODE § 8-107**

61. Plaintiff re-alleges Paragraphs 1 through 60 and incorporates them by reference as Paragraphs 1 through 60 of Count V of this Complaint.

62. Plaintiff alleges that New York City Administrative Code § 8-107, makes it unlawful to discriminate against any individual in the terms, conditions, or privileges of employment because of their race.

63. Plaintiff alleges that Defendants' CITY; STEPHEN CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER discriminated against him because of his race.

64. Plaintiff alleges that as a direct and proximate result of the unlawful employment practices of Defendants' CITY; STEPHEN CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER, he suffered the indignity of race discrimination and great humiliation.

65. Plaintiff alleges that Defendants' CITY; STEPHEN CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER'S violations caused him mental anguish, emotional distress, and loss of employment opportunities.

JURY TRIAL

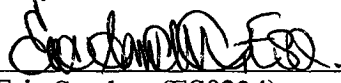
66. Plaintiff demands a trial by jury of all issues in this action that are so triable.

PRAYER FOR RELIEF

Wherefore, Plaintiff demands compensatory and punitive damages from Defendants' CITY; STEPHEN CAPASSO; GEORGE MISFUD; GEORGE HELLMER; DONALD CUSACK and DARYL MILLER jointly and severally, in an amount to be determined at trial, plus any and all available statutory remedies, both legal and equitable, and interests and costs.

Dated: June 15, 2011
New York, NY

Respectfully submitted,

By: 
Eric Sanders (ES0224)

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