

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRANCISCO BAEZ,)
Plaintiff,)
v.) No.: 16-CV-11865-GAO
THE CITY OF BROCKTON;)
GEORGE KHOURY;)
EMANUEL GOMES; and)
WAYNE SARGO,)
Defendants.)

**THE PLAINTIFF'S FIRST AMENDED COMPLAINT AND JURY TRIAL
DEMAND**

A. **NATURE OF THE ACTION**

This is an action for equitable and legal relief attorneys' fees, costs, and other relief against Defendants, based on their discrimination against Plaintiff on account of his race, national origin, and ethnicity.

This is a suit in law and equity seeking redress for violation of M.G.L. c. 151B, § 4(1), Fair Employment Practices Act. This case is also brought against the individual Defendants pursuant to 42 U.S.C. § 1983 alleging discrimination on account of race, national origin/ethnicity.

B. **JURISDICTION**

This Court has original jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1333(a)(3), and over claims brought under 42 U.S.C. § 1983. This Court has supplemental jurisdiction over the state civil rights claims pursuant to 28 U.S.C. § 1337(a).

Venue in this district is proper pursuant to 28 U.S.C. § 1391, in that each cause of action arose in this district. All conditions precedent to suit have been complied with, to wit: Plaintiff timely filed a complaint with the Massachusetts Commission Against Discrimination and more than ninety days have elapsed since that filing.

C. PARTIES TO THIS ACTION

1. Francisco Baez (the “Plaintiff”) is a Black, Hispanic male whose parents were born in the Dominican Republic. During all times relevant to this Complaint the Plaintiff was employed as a police officer for the City of Brockton Police Department (the “Department”). The Plaintiff resides in the Town of Avon, County of Norfolk, Commonwealth of Massachusetts.

2. The City of Brockton (the “City”) is a duly incorporated city under the laws of the Commonwealth of Massachusetts, located in the County of Plymouth, Commonwealth of Massachusetts. The Department is the municipal police department of the City. The Department is a department of the City.

3. George Khoury (“Sergeant Khoury”) was, during all relevant times, a Sergeant in the Department.

4. Emanuel Gomes (“Chief Gomes”) was, during all relevant times, the Chief of the Department, he is presently a Captain in the Department.

5. Wayne Sargo (“Captain Sargo”) was, during all relevant times, was the Captain of Operations for the Department.

D. FACTUAL ALLEGATIONS

6. The Plaintiff is a Black Hispanic male whose parents were born in the Dominican Republic.

7. The Plaintiff began working as a police officer for the Department in 1996.

8. During the Plaintiff's employment with the Department he was the only employee of the Department of Dominican Republic ancestry.

9. During the time that the Plaintiff worked with Sergeant Khoury, Sergeant Khoury referred to black people as "niggers" and to Hispanic people as "spics". Sergeant Khoury also referred to white women who dated black men as, "white trash nigger lovers".

10. On September 13, 2013, the Plaintiff was in the booking area as were a number of other officers including Sergeant Khoury. The Plaintiff walked by Sergeant Khoury but never, pushed him, nudged him, or touched him in any way.

11. On September 15, 2013 Sergeant Khoury wrote a report to Chief Gomes about the Plaintiff. In that report, despite the fact that the Plaintiff did not even touch Sergeant Khoury, Sergeant Khoury reported to Chief Gomes that, on September 13, 2013, sometime after 1600 hours, in the booking room, the Plaintiff bumped into him and was discourteous to him. Sergeant Khoury referred to the conduct of the Plaintiff as an assault on him by the Plaintiff.

12. In Sergeant Khoury's September 15, 2013 report to Chief Gomes, Sergeant Khoury also alleged that on the same day, September 13, 2013, that the Plaintiff passed him in the hallway leading to the cell area and bumped him as he passed. This allegation is also a complete fabrication.

13. Sergeant Khoury's false allegation was made because he had animus towards the Plaintiff on account of the Plaintiff's race, national origin, and/or ethnicity.

14. Neither Chief Gomes nor Captain Sargo informed the Plaintiff of the allegations against him.

15. Captain Sargo sent the Plaintiff a memo dated September 17, 2013. In that memo Captain Sargo asked the Plaintiff to state, in writing, what duties he was performing on September 13, 2013 regarding the “Neighborhood Surge” and to describe in detail any interaction with Sergeant Khoury.

16. The Plaintiff responded to Captain Sargo that on September 13, 2013 he had no interaction with Sergeant Khoury.

17. On December 10, 2013, as a result of the false allegation made by Sergeant Khoury, the Plaintiff received a written disciplinary action issued by Captain Sargo. In that letter of reprimand Captain Sargo stated that; “Sergeant Khoury related that you did willfully bump him twice in the booking area and while he was involved with a ‘Neighborhood Surge’ operation.” Captain Sargo reprimanded the Plaintiff for conduct unbecoming of an officer and for insubordination.

18. At the time Captain Sargo issued the written reprimand to the Plaintiff Captain Sargo was aware that the booking area, where the alleged incident took place was monitored by a camera that video recorded the area.

19. Captain Sargo viewed the tape of the booking area for the time that Sergeant Khoury claimed he was assaulted by the Plaintiff before he issued a letter of reprimand.

20. Captain Sargo issued a written reprimand to the Plaintiff despite the fact that Captain Sargo had access to and viewed a video of the booking area which showed

that at the time Sergeant Khoury claimed that he was bumped by the Plaintiff he was not touched by the Plaintiff, or by anyone else.

21. At the time Captain Sargo issued the letter of reprimand to the Plaintiff, Captain Sargo was aware that the tape recording of the booking area showed that the Plaintiff did not bump Sergeant Khoury and that Sergeant Khoury's report was either wrong or a complete fabrication.

22. Captain Sargo never informed the Plaintiff of the allegations against him before he issued the Plaintiff a disciplinary letter of reprimand and thus never gave the Plaintiff an opportunity to respond to the allegations made by Sergeant Khoury before issuing a disciplinary reprimand to the Plaintiff.

23. The decision by Captain Sargo to discipline the Plaintiff in spite of the fact that he had in his possession a video clearly demonstrating that Sergeant Khoury was engaged in a total fabrication was on account of discrimination, racial, national origin, and ethnic animus on the part of Captain Sargo against the Plaintiff and/or because he was condoning and acting on the prejudice and/or discriminatory animus of Sergeant Khoury.

24. On or about December 10, 2013 the Plaintiff appealed his written disciplinary reprimand to Chief Gomes.

25. Chief Gomes knew that the area where the alleged assault of Sergeant Khoury occurred was an area in the booking room monitored by a camera that recorded the activity in the area.

26. Before he issued a denial of the Plaintiff's appeal of his written disciplinary reprimand, Chief Gomes had access to the video recording of the booking room at the date and time of the alleged assault of Sergeant Khoury by the Plaintiff.

27. Chief Gomes upheld the written reprimand of the Plaintiff despite the fact that he had in his possession and viewed a video clearly demonstrating that Sergeant Khoury had engaged in a total fabrication when he alleged that the Plaintiff had assaulted him.

28. The decision of then Chief Gomes to uphold the written reprimand of the Plaintiff was on account of racial, national origin, and ethnic bias and animus on the part of Chief Gomes and because he was conditioning and acting on the prejudice and discriminatory animus of Sergeant Khoury

29. In an attempt to defend the Plaintiff, his union asked the Department to produce the video of the booking area on the date in question. The union was told by the Department that no such tape existed. This was a lie, in fact a copy of the video of the booking room, on the day in question had been made and preserved by the Department.

30. On or about January 13, 2014 the Plaintiff made a written request for his personnel records.

31. In February 2014 the Plaintiff received his personnel records, in the records was a video of the booking area for the date of September 13, 2013.

32. The video of the booking area for the date of September 13, 2013 showed that the Plaintiff had no body contact with Sergeant Khoury and that Sergeant Khoury's allegations that the Plaintiff had assaulted him were a total fabrication.

33. The Plaintiff filed a grievance of the decision of Chief Gomes upholding his written reprimand.

34. A hearing was held before the City of Brockton Director of Personnel Maureen Cruise (“Director Cruise”).

35. At the hearing before Director Cruise the recording of the booking area for September 13, 2013 was available and was shown to Director Cruise. The recording showed that the Plaintiff never bumped Sergeant Khoury and was evidence that Sergeant Khoury had fabricated his story which led to the Plaintiff being issued a written disciplinary reprimand.

36. Despite the clear evidence that Sergeant Khoury had fabricated his allegation that he had been assaulted by the Plaintiff, Director Cruise upheld the written reprimand of the Plaintiff.

37. The Plaintiff’s union appealed the Director Cruise’s decision upholding the written reprimand of the Plaintiff to an independent arbitrator, as was the union’s right under the existing collective bargaining agreement.

38. On or about September 3, 2014, after the Plaintiff’s union appealed the written reprimand to an independent arbitrator, the City of Brockton entered into an agreement whereby the City of Brockton agreed to remove the Plaintiff’s written reprimand from the Plaintiff’s personnel records and to rescind the discipline issued to the Plaintiff.

39. On September 24, 2014 the Plaintiff filed a complaint with Lieutenant William Hallisey, who was, at the time, in charge of the Internal Affairs Division of the Department. In the complaint the Plaintiff asked that a formal investigation be conducted

concerning the lies and fabrications of Sergeant Khoury that he had been assaulted by the Plaintiff, in the booking area, on the day of September 13, 2013. In the same complaint the Plaintiff requested that Captain Sargo and now former Chief Gomes also be investigated.

40. On information and belief neither Sergeant Khoury, Captain Sargo, nor former Chief Gomes were ever disciplined as a result of the fabricated charges made against the Plaintiff.

41. The Plaintiff was emotionally pained because he was concerned that a reprimand in his file for allegedly assaulting a superior officer would mean that the Plaintiff would never be promoted.

42. The fabricated charges made by Sergeant Khoury, the failure to investigate those charges, and the upholding of those charges cause the Plaintiff severe mental pain and suffering due to the fact that the Plaintiff was extremely fearful that he was being set up for termination by and from the Department.

43. The Plaintiff was extremely upset and concerned that if he was terminated from the Department that he would never work as a police officer again and that he would not be able to support his family

WHEREFORE, the Plaintiff demands that this Court order:

- A. That the Defendants compensate him for any loss of wages and/or benefits, incurred as a result of their discriminatory and/or retaliatory conduct;
- B. That the Plaintiff be awarded an amount of money which will fairly compensate him for his emotional and physical pain and suffering;

- C. That the Defendants pay the Plaintiff's costs and attorneys' fees resulting from this action;
- D. That the Plaintiff be awarded punitive damages;
- E. That the Defendants pay the plaintiff interest on any judgment entered from the time of the filing of this suit; and
- F. Such other relief as may be just and proper and/or which will make the Plaintiff whole.

The Plaintiff requests a Jury Trial on All Issues and Causes of Action Contained in this Complaint.

Respectfully Submitted,

The Plaintiff
By his Attorney,

/s/ Kevin G. Powers

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Certificate of Service

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the NEF (NEF) and paper copies will be sent to those indicated as non registered participants on February 7, 2017.

/s/ Kevin G. Powers
Kevin G. Powers