

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DOCKET NO. 16-cv-11865-GAO

FRANCISCO BAEZ,

Plaintiff

v.

THE CITY OF BROCKTON POLICE
DEPARTMENT; GEORGE KHOURY;
EMANUEL GOMES; and
WAYNE SARGO,

Defendants

DEFENDANT CITY OF BROCKTON
POLICE DEPARTMENT'S
MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION TO DISMISS

I. STATEMENT OF THE CASE

This is an action brought by the Plaintiff for equitable and legal relief, attorney's fees and costs seeking regress for violations of M.G.L. c. 151B, § 4(1) and (4) and 42 U.S.C. § 1983.

II. STATEMENT OF THE FACTS

The Plaintiff is a police officer for the City of Brockton, having been hired to perform police duties in 1996 (Complaint, ¶ 7).

Plaintiff alleges that on September 15, 2013, Defendant Khoury wrote a report to Defendant Gomes alleging that the Plaintiff had bumped into Khoury and was discourtesy to him on September 13, 2013. Khoury's report was written on September 15, 2013 (*Id.* at ¶¶ 10-11).

Plaintiff alleges that as a result of Khoury's report, he received a written letter of reprimand from Defendant Sargo (*Id.* at ¶¶ 17).

Plaintiff appealed this discipline and a grievance hearing was held before the City of Brockton Personnel Director at which time she upheld the written letter of reprimand (*Id.* at ¶¶ 34-36).

Plaintiff alleges that his union then appealed the reprimand to an independent arbitrator, and that prior to the arbitration the parties reached an agreement to remove the Plaintiff's written reprimand from his personnel record and to rescind the discipline (*Id.* at ¶ 38).

Plaintiff then filed a Complaint with the Internal Affairs Division of the Brockton Police Department on September 24, 2014 that alleges that no discipline was taken against any of the Defendants (*Id.* at ¶¶ 39-40).

III. ARGUMENT

Defendant City of Brockton Police Department is Not a Separate Entity and Therefore Should Be Dismissed

The City of Brockton Police Department has been named as a defendant in this action. However, City of Brockton Police Department is not a separate, legally distinct entity but a department within the City of Brockton. Accordingly, any and all claims brought against the City of Brockton Police Department is more appropriately directed against the City of Brockton. See Stratton v. City of Boston, 731 F. Supp. 42, 46 (D. Mass. 1989).

IV. CONCLUSION

For the above stated reason, the City of Brockton Police Department should be dismissed as a Defendant.

Defendant, City of Brockton
Police Department,

By its Attorney,

/s/Stephen C. Pfaff

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CERTIFICATE OF SERVICE

I, Stephen C. Pfaff, hereby certify that on the 13th day of October, 2016, I served the foregoing by causing a copy to be directed electronically or via e-mail/first class mail, postage prepaid to:

Kevin Powers, Esq.
Rodgers, Powers & Schwartz LLP
111 Devonshire Street
Boston, MA 02109

/s/Stephen C. Pfaff

Stephen C. Pfaff