

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS on the Complaint of	VERIFIED COMPLAINT Pursuant to Executive Law, Article 15
JONATHAN P. WHARTON, Complainant, v. COUNTY OF NASSAU, NASSAU COUNTY SHERIFF'S DEPARTMENT, CONTRERAS , SPOSATO, MARY ELISABETH OSTERMANN Respondent.	Case No.

Federal Charge No.

I, JONATHAN P. WHARTON, residing at _____, charge the above named respondents, whose address is 100 Carman Avenue, East Meadow, NY with unlawful discriminatory and retaliatory employment practices in violation of Article 15 of the Executive Law of the State of New York (Human Rights Law) **Sections 290 and 296**, and Title VII of the Civil Rights Act because of his religion, race, and color and in retaliation for opposing discriminatory actions and practices.

Date most recent or continuing discrimination took place is 11/23/2015.

The allegations are:

1. I am a Christian African-American man, and am currently employed as a Correction Officer by the respondent, COUNTY OF NASSAU and the NASSAU COUNTY SHERIFF'S DEPARTMENT located at 100 Carman Avenue, East Meadow, NY. I have been employed by the respondent from August 18, 1988 to present.
2. I believe that I am being discriminated and retaliated against due to my race, color, and religion because of a lawsuit that I filed against the Respondents on January 15, 2010, for which the jury found in my favor. I filed that lawsuit due to the Defendants' discriminating against me

based upon my race and religion, and for retaliating against me for complaining about the Defendants' discriminatory employment practices. The jury found the Defendants' liable for retaliation and awarded me \$420,000 in damages. [Nassau County Sheriff's Department, Elizabeth Loconsolo, Captain Peter Dudek, Captain Anthony Zuarro, Gerard Humphreys, and Mary Elizabeth Ostermann]

3. I also believe that the Respondents are discriminating and retaliating against me in response to the lawsuit being reported in Newsday and News 12 Long Island, on September 18, 2014 after the jury found the case in my favor.

4. The Respondents have retaliated against me, supported a hostile work environment, and continue to do so, by failing to address wrongful acts taken against me and failing to adequately investigate complaints that I filed.

5. One of the complaints that the Respondents' have failed to adequately investigate include the one I filed on November 18, 2014. (Exhibit A). I filed the complaint in response to a racist attack that I was a victim to at the hands of Correction Officer ("C/O") Reilly; a white male. Furthermore, not only have the Respondents' failed to meaningfully investigate the incident that occurred over a year ago or discipline Correction Officer Reilly, the aggressor, but they have recently placed me under investigation as well.

6. I filed a complaint on December 19, 2014 against my supervisor, Sergeant McNamara based on retaliation and discrimination. Respondents' have failed to adequately investigate this complaint.

7. The Respondents are also retaliating against me by ignoring another complaint that I filed on July 22, 2015, after observing a very derogatory and discriminatory drawing of a blackman hanging on the office wall where I work. (Exhibit B). The drawing was prominently displayed for all to see, including myself.

8. Additionally, the Respondents continue to ignore a complaint I filed on October 30, 2015 against Respondent Mary Elisabeth Ostermann for violating the Nassau County Equal Employment Opportunity Policy, Standard and Procedures to be utilized by Nassau County in its investigation of the complaints I have filed.

Racist Attack

9. On November 18, 2014, I was the victim of a racist attack at the hands Correction Officer Reilly, who is white. I reported it promptly. The Respondents' have failed to properly investigate this incident, even though they were fully aware of it.

10. The attack took place during the breakfast feeding time of the inmates, of which I was

the one in charge. While supervising two food cart workers, I observed that the inmates in “B” Dorm were out of their cells and the door to the dorm was open. I immediately directed another Correction Officer to close the door to that dorm, which he did. I subsequently observed Correction Officer Reilly inside of the dorm. I approached Correction Officer Reilly to inform him that we feed the inmates inside their cells. I directed him to tell the inmates to immediately lock back into their cells, after informing him at least three times. Correction Officer Reilly refused to tell the inmates to lock back into their cells, and instead told me to open the door to let him out of the dorm. At this point I verbally ordered the inmates to lock back into their cells, to which they all peacefully complied.

11. Once the “B” Dorm was secure, I told Correction Officer Sica to open the entrance door to allow Correction Officer Reilly to exit the dorm. Thereafter, Correction Officer Reilly exited the dorm, approached me, and said, “Yo Man, you disrespected me in front of the inmates and no one disrespects me. You are full of shit and a fucking skid.” I responded by informing him that my name was either Mr. Wharton or Officer Wharton, not “Man.” Correction Officer Reilly responded violently, “fuck you, you are a piece of shit and a fucking skid.” I tried to exit the room, but Correction Officer Reilly blocked me from doing so. Instead, he tried to engage me in a physical confrontation. I declined to physically respond and did not engage him. Correction Officer Reilly finally left the room and I continued to supervise the food cart workers.

12. “Skid” is a derogatory and discriminatory term. I found the use of this term to be offensive, abusive, and threatening, especially when coupled with the curse words, physical actions and physical threats.

13. As I directed the workers to finish cleaning up, Correction Officer Reilly reappeared and said, “you should have your teeth knocked down your fucking throat.” I did not give Correction Officer Reilly a reply, rather I kept my hands in my pockets in a nonthreatening manner. Correction Officer Reilly went on to repeat, “you should have your teeth knocked down your fucking throat … you fucking skid.” In an attempt to back him off of me, I asked, “are you threatening me? And I am not afraid of you. You are not the one.” At this point Correction Officer D’Anria tried to mediate and Sergeant Peter McNamara ordered us to stop talking. Correction Officer Reilly continued to try and escalate the situation.

14. Sergeant McNamara directed me into the office and asked me to explain what this was all about, in front of Correction Officer Sica. I informed Sergeant McNamara that I observed that the inmates from the “B” dorm were out of their cells during the feeding time, while the door to the dorm was left open. I also stated that as long as I have been doing the breakfast feeding in “B” dorm, we have always fed the inmates within their cells.

15. Subsequently, Sergeant McNamara spoke with Correction Officer Reilly; once within in

the “B” dorm, and again in his office after properly relieving Correction Officer Reilly from his post assignment. Sergeant McNamara never took me into his office to interview me, even though he did so for Officer Reilly, the perpetrator. I believe the treatment of Correction Officer Reilly was different than how I was treated, as he was taken into the office.

16. Moreover, although Sergeant McNamara spoke with Correction Officer Sica regarding Correction Officer Reilly, he never asked the other witnessing Correction Officers for a report on the day of the incident, 11/18/2014.

17. Correction Officer Reilly was insubordinate, and he created a racially charged hostile work environment towards me by making physical threats and using derogatory racist comments in the presence of my coworkers and the inmates that were in hearing distance, due to his out of control rant.

18. As a result, I filed a complaint immediately. On the day of the incident, I sent my supervisor, Sergeant McNamara a detailed memorandum documenting the incident, filed a complaint with the Nassau County Equal Employment Opportunity, and filed a Workplace Violence Incident Report. I also made a formal complaint to the Affirmative Action Specialist, Audre Guilty, and CPLD Henderson, Commanding Officer of Internal Affairs Unit, to Personnel Supervisor D. Lewis and Captain E. Jorgenson, Commanding Officer Human Resources. Finally, I contacted Melissa Galluci, the Director of Human Resources/ workplace violence prevention.
[Double check everyone’s name/ title]

Delayed and Faulty Investigation/ Failure to Investigate Racist Attack

19. I filed a complaint with both the Nassau County Equal Employment Opportunity (“NCEEO”) and Internal Affairs (“IAU”), regarding the racist attack that I was a victim too. However, both Both NCEEO & IAU have failed to adequately investigate incident.

(A) Nassau County Equal Employment Opportunity

20. The Nassau County Equal Employment Opportunity Policy states that the County will promptly investigate allegations of discrimination against employees based on their race and color. (Exhibit C). As such, the policy requires that the investigation and a preliminary determination on the complaint be completed no later than sixty days from the date the complaint is filed.

21. The Respondents’ have failed to adequately investigate the complaint I filed on November 18, 2014, even though more than sixty days have passed from the filing date. In fact, it has been over one year since I filed the complaint in regards to the racist attack.

22. December 4, 2014 was the original date set for my Equal Employment Opportunity

(“EEO”) interview regarding Correction Officer Reilly’s racist attack against me that took place on November 18, 2014. However, this interview did not take place because my Union Representative, Correction Officer Temo, refused to partake in the interview as long as Andre E. Guilty, the Affirmative Action Officer was present. This was due to the animosities that the Union holds towards Andre E. Guilty, the Affirmative Action Officer, for allegedly not caring about discrimination against whites.

23. On the date of my interview, I met with Corrections Corporal Christopher Contreras and my Union Representative, Correction Officer Temo,. I was told by Correction Officer Temo, that “even though Andre E. Guilty, Affirmative Action Officer for the Sheriff’s Department took my complaint, he/the union would not sit with me as long as Mr. Guilty was present.” I insisted that as long as Sheriff Michael Spasato, Director of Equal Employment Opportunity, Mary Elizabeth Ostermann, County Attorney Carnell Foskey and Nassau County Executive Edward Mangano have not made any changes in his appointment dated May 9, 2012, I will follow their protocol and my preference. My Union Representative, Correction Officer Temo, excused himself from that meeting and Cpl. Contreras was present.

24. On December 31, 2014 I wrote a letter to Sheriff Sposato to request that my rescheduled EEO interview be held in the A Building Chapel rather than the Affirmative Action Office (“AAO”) in the Correction Facility, where the original scheduled interview was supposed to take place. I made this request because I was not comfortable in the AAO, as it had an intimidating and stressful atmosphere.

25. In the letter, I also requested to have the Chapel opened prior to the interview so that I could meditate and pray. The whole process of the EEO interview was very stressful. As a devout Christian, I find peace through prayer. Thus, I made this simple request.

26. On Jan 2, 2014, I received a letter from County Attorney Carnell T. Foskey addressing the letter that I wrote to Sheriff Sposato. The County Attorney agreed to change the location of the rescheduled interview. He offered to hold the interview in the Nassau County Attorney Office. However, the County Attorney did not address my request for accommodations so that I could pray before the interview. Instead, he wrote, “I am unable to address your request to pray and meditate in the A Building Chapel.”

27. My simple request to have the Chapel opened earlier so that I could pray before the next scheduled interview was never addressed.

28. The EEO interview was subsequently rescheduled for January 5, 2015. However, this interview did not take place because my Union Representative, Correction Officer Temo, did not show up because he knew Andre E. Guilty, the Affirmative Action Officer, would be present.

29. On December 19, 2014 I made a verbal complaint to Corrections Corporal Contreras against Sergeant McNamara for discriminating against me based on my race and color, and for retaliating against me.

30. On February 27, 2015 I received a letter from Elisabeth Ostermann, the Director of the Nassau County EEO, that the investigation of the complaint against Reilly and McNamara alleging a hostile work environment based on derogatory racist name calling/ retaliation had been completed and the allegations were unsubstantiated. The allegations were “unsubstantiated” because no one corroborated the physical/ racist comments during the investigation.

31. However, this investigation clearly was not adequately commenced, as even I, the complainant, was never interviewed.

B. Internal Affairs Unit

32. On January 30, 2015, I was informed by Jonathan N. Morris that the Sheriff Bureau of investigation was conducting an official investigation of the 11/18/14 incident. I was ordered to be present for an interview on February 4, 2015.

33. On February 3, 2015 Jonathan N. Morris granted me permission to have my attorney, Stephanie Platt, representing Frederick K. Brewington to be present at the interview scheduled for February 4, 2015.

34. Shortly after, I was informed by COBA representative Corey Timo and Internal Affairs Unit (“IAU”) investigator Jonathan Morris that the IAU investigation scheduled from February 4, 2015 was cancelled on Sheriff Michael Sposato’s orders due to the fact that I indicated that my attorney, Stephanie Platt, representing Frederick K. Brewington, Esq would be in attendance.

35. Thereafter, on February 7, 2015, I wrote to Sheriff Michael Sposato in regards to a number of issues. First, I requested that a letter from him prior to the next IAU investigation of my complaint indicating my rights under the Department’s Rules and Regulations to have my attorney present. Secondly, I requested for my interview to take place in a building other than the A Building, as I did not feel comfortable there. I had made a similar request for one of my scheduled EEO interviews, to which the County Attorney responded by offering to hold the interview in his office. As such, as I asked Sheriff Sposato to make similar accomodations by holding the interview in a venue other than the A Building. Lastly, I requested to have the Chapel opened prior to my hearing so that I could pray.

36. On August 25, 2015, I was informed by Jonathan N. Morris that my interview had been rescheduled for August 28, 2015, regarding the 11/18 incident. I promptly called Lieutenant Miller to inform him that I there was a conflict with the scheduled interview date. I was not

scheduled to work on August 28, 2015, and such interviews are usually scheduled on days that the person who is being interviewed is at work. [double check iA]. I did not hear back from Lieutenant Miller, thus the interview did not take place on August 28, 2015.

37. My IAU interview in regards to the November 18, 2014 incident was finally rescheduled to be held on November 23, 2015.

38. On November 10, 2015 my attorney, Frederick K. Brewington, received a letter from the Investigator Captain, Michael R. Golio informing him that I was the target of an official IAU investigation, as Correction Officer Reilly had filed a “cross-claim” against me. As such, I was prohibited from having my attorney present at the interview.

39. After a one year delay, I was finally interviewed by the Internal Affairs Unit on November 23, 2015. However, I was also under investigation at this interview, because Correction Officer Reilly has filed a crossclaim against me. Correction Officer Reilly alleges that I “chest bumped him,” and that “I did not give him a spoon.” I suppose the spoon was for himself or an inmate. The interviewer did not give me anymore information.

40. I was also not given any information in regards to when Correction Officer Reilly filed his crossclaim. I asked both Lieutenant Miller and Investigator Morris for this information, but they both replied that “they did not know” or “have that information with them.”

41. Furthermore, I was unable to pray in the Chapel before the interview, as the Respondents’ failed to open the Chapel.

Another Ignored Complaint: The Derogatory and Discriminatory Picture

42. On July 22, 2015, I observed a very derogatory drawing of an African-American man on the wall prominently displayed on the office wall where I work. I immediately brought it to the attention of my coworkers, Correction Officer Sica and Correction Officer Gerrato. I subsequently brought it to the attention of my immediate supervisor, Sergeant Cintrone. I removed the drawing after receiving permission from Sergeant Cintrone, who said it should have never have been put up there.

43. I filed a Nassau County Equal Employment Opportunity complaint on the same day, July 22, 2015.

44. I believe whom ever drew the derogatory picture, did so with a discriminatory intent. Additionally, I believe whom ever prominently displayed the picture on the office wall where I work intended for me to see the drawing, also committing a racist act.

45. Although, Correction Officer Sica and Correction Officer Gerrato [are they white?] were interviewed on around October 8, 2015, regarding this complaint, the Respondents' have failed to interview me. Furthermore, I have not been contacted in regards to any investigation pertaining to this complaint.

Failure to Investigate Complaint

46. Finally on October 30, 2015, I filed a Nassau County Equal Employment Complaint Form against the Nassau County Equal Employment Opportunity Director, Respondent Mary Elisabeth Ostermann.

47. I filed the complaint against Respondent Ostermann because she violated the Nassau County Equal Employment Opportunity Policy, Standard and Procedures to be utilized by Nassau County and its agencies from April 2009 through September 2014 in its investigation of my complaints filed from 11/18/14 to the present. Furthermore, I did not receive the Nassau County Sheriffs Dept Affirmative Action Policy Plan or Procedure when I requested it from Respondent Ostermann in April 2009 to the present.

48. Once again, this complaint has been blatantly ignored, downplayed, and minimized by the Respondents', as I have not heard anything in regards to it.

Conclusion

49. The Respondents have discriminated and retaliated against me based on my religion, color, and race, by ignoring and failing to adequately investigate the complaints I filed.

50. Not only have I been discriminated against by my coworkers, but by my employers as well. By ignoring the discrimination and racism that I have been faced with at my workplace, the Respondents' have helped to flourish a hostile workplace where I can be freely abused.

51. I am a victim of bias, racism, threat of physical abuse, and retaliation.

Dated: December , 2015
Hempstead, New York

JONATHAN P. WHARTON

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

JONATHAN P. WHARTON, being duly sworn, depose and says: that he is the complainant herein; that he has read the foregoing complaint and knows the content thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief; and that as to those matters, he believes the same to be true.

JONATHAN P. WHARTON

Severally Subscribed and sworn to before me
this 10th day of December 2015

NOTARY PUBLIC