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NEW YORK STATE  
DIVISION OF HUMAN RIGHTS

JUN 10 2021

NEW YORK STATE DIVISION OF  
HUMAN RIGHTS on the Complaint of

KAREEM PROCTOR,

Complainant,

v.

SOUTHAMPTON VILLAGE POLICE  
DEPARTMENT, VILLAGE OF SOUTHAMPTON,

Respondents.

LAW OFFICES OF  
FREDERICK K. BREWINGTON

REOPENING

Case No.  
10202786

A complaint was filed with the New York State Division of Human Rights ("Division") charging the above-named respondent with an unlawful discriminatory practice relating to employment.

A determination was issued dismissing the complaint for lack of probable cause. A Rule 20(a) notice was issued to the parties. The Respondent submitted a response to the reopening notice.

The Division, upon its own motion, pursuant to Rule 20(a) of the Rules of Practice of the Division (9 NYCRR § 465.20(a)) has reviewed the determination. Pursuant to the Rules of Practice, I find that the proceeding should be reopened and remanded to the Regional Director for the issuance of a probable cause determination.

The Complainant was the only African-American police officer assigned to the Respondents' East End Drug Task Force. Service on this task force leads automatically to promotion to the position of Detective, subject to Village Board approval. The Complainant alleges that one day prior to his automatic promotion, the Respondents removed him from the task force, for the purported reason that the Complainant had familial ties to individuals who were subjects of a police investigation.

The Complainant alleges that from the beginning of his employment he disclosed to the Respondents that he had cousins who use and sell drugs, and he provided details about a cousin's drug activity. The Complainant alleges that at no time prior to his prospective automatic promotion date did the Respondents tell him that he would be precluded from future advancement opportunities based on any familial ties with individuals engaged in criminal activity.

The Complainant alleges that the Respondents promoted a white officer, Michael Horstman, instead of the Complainant. Another white officer, Kimberleigh McMahan, had also

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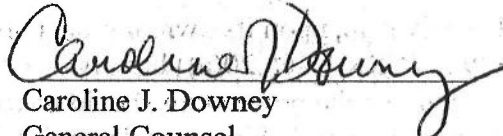
been promoted, notwithstanding questions about her work performance. The Complainant alleges that all of the other police officers who have served on the task force since he joined the police department, none of whom are African-American, have been promoted to Detective or other higher rank.

NOTICE TO REPLY  
FREDERICK K BREWINGTON  
LAW OFFICES OF

Probable cause to believe that unlawful discrimination occurred exists when, after giving credence to the Complainant's version of the facts, some evidence of discrimination exists. *Robertson v. State of New York*, 240 A.D.2d 504 (2d Dept. 1997). A complaint may not be dismissed for lack of probable cause unless the facts revealed generate conviction in and persuade a fair and detached fact finder that there is no substance in the complaint. *State Division of Human Rights (Thompson) v. Hatch Assoc. Consultants, Inc.*, 110 A.D.2d 1049, 488 N.Y.S.2d 907 (4th Dept. 1985). A determination of probable cause is not a final adjudication, but merely a determination that there should be a formal hearing on the matter. *Board of Education v. State Div. of Human Rights*, 68 Misc.2d 1035, 330 N.Y.S.2d 274 (Sup.Ct. West.Co. 1972).

A review of the record reveals that there are material issues of fact involved which are best resolved at a public hearing before an administrative law judge, where testimony is taken under oath, witnesses are subject to cross-examination and a full record is made. These issues include, but are not limited to, whether the Respondents failed to promote the Complainant because of his race, whether the Respondents' reasons for the abrupt reassignment of the Complainant a day before his automatic promotion were pretextual, and whether similarly situated white officers were promoted to Detective or other higher positions.

Dated: May 27, 2021  
Bronx, New York

  
Caroline J. Downey  
General Counsel