

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

MICHAEL J. DAMIANI,

Plaintiff,

vs.

CITY OF EAST PROVIDENCE by and through JAMES MCDONALD in his capacity as Finance Director, MAYOR ISADORE S. RAMOS, Individually and in his capacity as City Council Member, ASSISTANT MAYOR BRUCE DITRAGLIA, Individually and in his capacity as City Council Member, ROBERT E. CUSACK, Individually and in his capacity as City Council Member, VALERIE A. PERRY, Individually and in his capacity as City Council Member, BRYAN P. SILVA, Individually and in his capacity as City Council Member, and RICHARD BROWN, Individually and in his capacity as City Manager

Defendants.

C.A. No. 08-

COMPLAINT

1. This Complaint arises out of allegations of employment discrimination, disparate impact and retaliation based upon disability.

JURISDICTION

2. The jurisdiction of this Court is invoked pursuant the Rhode Island Fair Employment Practices Act, G.L. 1956 § 28-5-1 et seq., Section 504 of the Rehabilitation Act of 1973 -- 29 U.S.C. § 794, and the Americans with Disabilities Act 42 USC § 12100 et seq. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332, 2201, 2202 and 42 U.S.C. § 12100 et seq.

VENUE

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 (b) and 42 U.S.C. §§ 12117 and 2000e-5(f)(3) because the unlawful employment practices complained of herein were committed in this judicial district.

4. Considerations of judicial economy, convenience and fairness to the litigants warrant exercise of this Court's supplemental jurisdiction over Plaintiff's state law claims. Plaintiff's state claims are so related to Plaintiff's federal claims that they form part of the same case or controversy.

PARTIES

5. Plaintiff, Michael J. Damiani ("Plaintiff") is a citizen of the United States and a resident of the City of East Providence, State of Rhode Island.

6. Defendants are local government employers receiving Federal financial funds with more than 15 employees including, the City of East Providence by and through JAMES MCDONALD in his capacity as FINANCE DIRECTOR, MAYOR ISADORE S. RAMOS, Individually and in his capacity as City Council Member, ASSISTANT MAYOR BRUCE DITRAGLIA, Individually and in his capacity as City Council Member, ROBERT E. CUSACK, Individually and in his capacity as City Council Member, VALERIE A. PERRY, Individually and in his capacity as City Council Member, BRYAN P. SILVA, Individually and in his capacity as City Council Member, and RICHARD BROWN, Individually and in his capacity as City Manager.

ADMINISTRATIVE PROCEDURES

7. On or about May 22, 2007, charges of employment discrimination by Plaintiff, based upon disability, disparate treatment and retaliation, were filed with the Commission for Human Rights for the State of Rhode Island (the "Commission").

8. On or about June 17, 2008 the Commission determined that probable cause existed to believe that the Defendants had violated the R.I. Fair Employment Practices Act (FEPA) and the R.I. Civil Rights of People with Disabilities Act. Specifically the Commission found that the Plaintiff had proven that he was subjected to disparate treatment on the basis of disability or perceived disability.

9. On or about July 31, 2008, the Commission issued a "Notice of Right To Sue" to Plaintiff. On or about August 21, 2008, the U.S. Equal Employment Opportunity Commission (the "EEOC") issued a "Notice of Suit Rights" to Plaintiff.

10. This complaint is being filed within ninety (90) days of the receipt of the Notice of Right to Sue from the Commission and the Notice of Suit Rights from the EEOC.

STATEMENT OF FACTS

11. Plaintiff was hired/appointed as Assistant Harbormaster by the City of East Providence on about April 17, 2007.

12. On that same date, the City Council unanimously approved Plaintiff's appointment as Assistant Harbormaster with the stipulation that Plaintiff undergo a "vigorous" physical examination.

13. Plaintiff had a history of cardiovascular disability and prior employment for the City of East Providence in the Police Department. Plaintiff was previously employed by the City of East Providence as a Police Officer. Plaintiff applied for and was awarded a disability pension from the City of East Providence based upon his cardiovascular condition.

14. Plaintiff's cardiovascular condition impacts one or more of his major life activities. Plaintiff is a qualified individual with a "disability" and/or Defendants regarded Plaintiff as having a disability, who, with or without reasonable accommodation, could perform the essential functions of his job. Plaintiff is "disabled" because he: (a) has a physical impairment that substantially limits one or more of his major life activities; (b) has a record of such an impairment; and (c) was regarded by Defendant as having such an impairment. Moreover, Plaintiff's cardiovascular condition constituted a serious medical illness because it required the type of treatment contemplated by applicable law.

15. Prior to April 17, 2007 there was no requirement that Assistant Harbormasters undergo "rigorous" physical examinations prior to appointment. Moreover, the position of Harbormaster/Assistant Harbormaster has no physical requirements in the City Charter.

16. Prior to April 17, 2007 there was no written requirement that Assistant Harbormasters undergo physical examinations prior to appointment.

17. On April 17, 2007 Plaintiff met all requirements to become Assistant Harbormaster as contained in Chapter 13, Article III Coastal Waters and Harbor Areas, Division 3, Sections 13-83 and 13-84 and any other applicable section of the City Charter.

18. Plaintiff completed all training classes prior to April 17, 2007 and was recommended by the Harbormaster for appointment.

19. On April 17, 2007 Councilman Robert Cusack stated that stipulations should be placed on Plaintiff's appointment as Assistant Harbormaster because "we know he has a heart condition."

20. Thus, the City Council unanimously approved Plaintiff's appointment as Assistant Harbormaster with the stipulation that Plaintiff be required to take a "vigorous" physical examination.

21. Plaintiff reported to Richard Brown the City Manager on or about April 18, 2007 to be sworn in as Assistant Harbormaster. Mr. Brown refused to meet with Plaintiff and was told that he would not be sworn in until he met the stipulation of a physical examination.

22. On or about May 15, 2007 two other nominees for Assistant Harbormaster came up for appointment before the City Council for approval. These two individuals were appointed without any stipulations for any physical examination.

23. The actions of the Defendants violated the Americans with Disabilities Act and applicable state law.

24. The actions of the Defendants violated the Federal and State Fair Employment Practices Act.

25. The actions of the Defendants violated Section 504 of the Rehabilitation Act of 1973 – 29 U.S.C. § 794.

26. The actions of Defendants were motivated by malice or ill will or were reckless or made with callous indifference to the statutorily protected rights of Plaintiff.

COUNT I
DISCRIMINATORY TERMS AND CONDITIONS OF EMPLOYMENT
AMERICANS WITH DISABILITIES ACT (42 U.S.C. § 12112)

27. Plaintiff incorporates by reference Paragraphs 1 through 26 as if fully set forth herein.

28. Despite Plaintiff's completion of all prerequisites for employment and unanimous approval of the City Council, the Defendants unlawfully subjected Plaintiff to discriminatory treatment because of Plaintiff's disability and/or because Defendants regarded Plaintiff as having a disability.

29. But for the Defendants' intent to discriminate against Plaintiff because of his disability and/or because Defendants regarded Plaintiff as having a disability, Defendants would not have subjected Plaintiff to discriminatory treatment in violation of 42 U.S.C. §12112.

30. Defendants purposefully and maliciously and without justification or excuse took the wrongful and discriminatory actions against Plaintiff because of Plaintiff's disability and/or because Defendants regarded Plaintiff as having a disability, which actions were in violation of 42 U.S.C. §12112.

31. As a direct, foreseeable, and intended result of such unlawful discrimination, Plaintiff has suffered personal injuries.

32. As a result of this course of Defendants' discriminatory treatment, Plaintiff has suffered and will continue to suffer pecuniary damages and compensatory damages. Defendants stand jointly and severally liable to Plaintiff for his resulting damages and for an appropriate award of exemplary or punitive damages.

WHEREFORE, Plaintiff prays for the relief hereinafter set forth.

COUNT II
DISCRIMINATORY TERMS AND CONDITIONS OF EMPLOYMENT
(29 U.S.C. § 794)

33. Plaintiff incorporates by reference Paragraphs 1 through 32 as if fully set forth herein.

34. Despite Plaintiff's completion of all prerequisites for employment and unanimous approval of the City Council, the Defendants unlawfully subjected Plaintiff to discriminatory treatment because of Plaintiff's disability and/or because Defendants regarded Plaintiff as having a disability.

35. But for the Defendants' intent to discriminate against Plaintiff because of his disability and/or because Defendants regarded Plaintiff as having a disability, Defendants would not have subjected Plaintiff to discriminatory treatment in violation of 29 U.S.C. § 794.

36. Defendants purposefully and maliciously and without justification or excuse took the wrongful and discriminatory actions against Plaintiff because of Plaintiff's disability and/or because Defendants regarded Plaintiff as having a disability, which actions were in violation of 29 U.S.C. § 794.

37. As a direct, foreseeable, and intended result of such unlawful discrimination, Plaintiff has suffered personal injuries.

38. As a result of this course of Defendants' discriminatory treatment, Plaintiff has suffered and will continue to suffer pecuniary damages and compensatory damages. Defendants stand jointly and severally liable to Plaintiff for his resulting damages and for an appropriate award of exemplary or punitive damages.

WHEREFORE, Plaintiff prays for the relief hereinafter set forth.

COUNT III
Rhode Island Fair Employment Practices Act ("FEPA")
G.L. 1956 §§ 28-5-1 et seq.
(Disparate Treatment)

39. Plaintiff incorporates by reference Paragraphs 1 through 38 as if fully set forth herein.

40. Plaintiff has a record of disability or was perceived as being disabled by Defendants.

41. Without mitigating measures, Plaintiff's disability would significantly impair a major life activity. Among other things, upon information and belief, Plaintiff's cardiovascular condition, if left untreated, would have rendered him unable to care for himself and unable to perform manual tasks and might cause his death.

42. At all relevant times, Plaintiff was able to perform the essential functions of the job of Assistant Harbormaster with or without reasonable accommodation.

43. By the aforesaid actions, Defendants intentionally violated the FEPA.

44. Plaintiff is damaged as a proximate result of Defendants' intentional conduct.

WHEREFORE, Plaintiff prays for the relief hereinafter set forth.

COUNT IV

Rhode Island Fair Employment Practices Act ("FEPA")

G.L. 1956 §§ 28-5-1 et seq.

(Retaliation)

45. Plaintiff incorporates by reference Paragraphs 1 through 44 as if fully set forth herein.

46. By the aforesaid actions, Defendants intentionally violated the FEPA. Among other things, Plaintiff was not sworn in as Assistant Harbormaster and was required to take a physical medical examination.

47. Plaintiff is damaged as a proximate result of Defendants' intentional conduct.

WHEREFORE, Plaintiff prays for the relief hereinafter set forth.

PRAYER FOR RELIEF

Plaintiff prays that this Court:

- (1) declare that the Defendants' actions complained of are unlawful;
- (2) order the Defendants to make the Plaintiff whole;
- (3) order the Defendants to pay Plaintiff compensatory damages;
- (4) order the Individual Defendants to pay Plaintiff punitive damages;
- (5) order the Defendants to pay Plaintiff liquidated damages;
- (6) retain the jurisdiction of this action to ensure full compliance;
- (7) order the Defendant to pay Plaintiff costs and expenses and reasonable attorney's

fees; and
(8) grant such other relief to Plaintiff as the court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury.

Plaintiff Michael J. Damiani,
By his attorney,

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Dated: October 27, 2008