

LAW OFFICES OF
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Attorneys for Plaintiff
GERALD NUNNERY
Our File No. 30.04.152

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SUPERIOR COURT
SOMERSET COUNTY

<p>GERALD NUNNERY, Plaintiff, vs. BRIDGEWATER TOWNSHIP, BRIDGEWATER TOWNSHIP POLICE DEPARTMENT, MAYOR PATRICIA FLANNERY, POLICE CHIEF RICHARD BORDEN, LT. RICK HOLLANDER, LT. ROBERT WILT and JOHN AND JANE DOES 1-10, Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: SOMERSET COUNTY DOCKET NO. L 1858-08 Civil Action COMPLAINT IN LIEU OF PREROGATIVE WRITS</p>
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Plaintiff, Gerald Nunnery, a sergeant with the Bridgewater Township Police Department residing at 7 leaver Lane, in the Town of Flemington, in the County of Hunterdon, in the State of New Jersey, by way of Complaint against the defendants, says:

FIRST COUNT

1. The Township of Bridgewater is a non-civil service jurisdiction which must be regulated through the Superior Court of New Jersey, pursuant to New Jersey Constitution, Art. VI, §5 paragraph 4 and New Jersey Court Rule 4:69. The Bridgewater Police Department is a "Chief's Test" law enforcement agency and currently has approximately 80 employed officers.
2. Defendant, Township Mayor Patricia Flannery acts as the Township's "appointing authority." Defendant Richard Borden is the chief of the Bridgewater Police Department [hereinafter "BPD"], which is the public entity in Bridgewater Township, empowered to

act as the police force delegated with the task of enforcing the laws of the State of New Jersey. The prior Chief of Police of BPD, Stephen Obal, was removed after a vote of no confidence and was replaced by the current Chief of Police, Richard Borden. The promotional process in effect prior to Chief Borden's resign, consisted solely of an officer being advised that he or she was promoted and not subjected to any type of application process. The new process, under Chief Borden, still fails to allow for a uniform standard of reviewing and judging the officers.

3. The promotional process was again amended to the current standards in or about May 2006. Again, this process was revised, but not fully corrected. The promotional process for the rank of lieutenant is a four-part process comprised of an oral interview, the recommendation of supervisors, the sergeant's years of service within the department, and attendance as outlined in Township Ordinance Article XIV § 4-82. [Exhibit A].
4. This process does not include a test and instead allows for arbitrary decisions based upon superior's personal opinions. Indeed, pursuant to Article XIV, "[e]ach supervisor independently selects the top six candidates and reports them in order of preference," which accounts for up to 35% of an applicant's total score. Id.
5. Thereafter, the Somerset County Chiefs of Police Association conducts an oral interview based upon questions submitted by supervisory members of the Bridgewater Township Police Department, which accounts for up to 35%. These arbitrary and non-uniform questions are thus geared towards candidates who are favored in the eyes of the BPD.

6. Finally, the sergeants are awarded one-half point per year for every full year of service plus .0125 point for every complete quarter of the remaining partial year, up to a maximum of 10% and additional points for attendance.
7. On October 8, 2008, defendants announced that Sergeant Rick Hollander and Sergeant Robert Wilt were promoted to the rank of Lieutenant.
8. On March 29, 2001, the New Jersey Supreme Court decided the case of Reuter v. Borough Council of the Borough of Fort Lee, 167 N.J. 38 (2001) In that case, the Court affirmed the decision of the Appellate Division which ruled that N.J.S.A. 40A:14-118 required that a police ordinance specify a police table of organization with the number of authorized police officer position in a police department, authorized police ranks, and the number of authorized positions within each rank. In its opinion, the Supreme Court stated that “from today forward no appointment may be made to any police position not created in accordance with N.J.S.A. 40A:14-118.”
9. Plaintiff was harmed by this inappropriate promotion as he was arbitrarily and unfairly ranked third on the prior promotional list and as a result was improperly passed over for promotion to lieutenant as only two promotions were made.
10. Furthermore, upon information and belief, Defendants purportedly promulgated an enabling ordinance to allow for only two promotions in accordance with a table of organization for the Police Department pursuant to N.J.S.A. 40A:14-118, and to purposely and unlawfully bypass the plaintiff.

11. As of March 29 2001, all governing body and police department issues rise and fall under N.J.S.A. 40A:14-118. The statute establishes, inter alia, the duties of the police department and the requirements which all local ordinances must satisfy.
12. In addition, due to the defendants' repeated failure to follow the law according to N.J.S.A. 40A:14-118, important public interests continue to be violated as taxpayer dollars are being improperly spent to pay promotional ranks that were made unlawfully and in a discriminatory effort to skip plaintiff and deny him the rightful promotion as he was most qualified and most experienced for the position.
13. Defendants' acts were wrongful, without basis in law or in fact, arbitrary, capricious, unconscionable, contrary to law and otherwise erroneous.

WHEREFORE, Plaintiff, Gerald Nunnery, demands judgment against defendants as follows:

- (a) Reversing and rescinding the promotions of Lt. Hollander and Lt. Wilt on October 8, 2008;
- (b) Reversing and rescinding any expenditures or benefits based upon any improper promotions;
- (c) Awarding plaintiff compensatory and punitive damages, attorneys fees and costs of suit pursuant to N.J.S.A. 34:19-1, et seq., and based upon the defendants' purposely wrongful conduct, and awarding interest, fines, and penalties against defendants;

- (c) Awarding plaintiff compensatory and punitive damages, attorneys fees and costs of suit pursuant to N.J.S.A. 34:19-1, et seq., and based upon the defendants' purposely wrongful conduct, and awarding interest, fines, and penalties against defendants;
- (d) Revising and changing the promotional process so that it comports with due process and is not arbitrary and capricious; and
- (e) Awarding such other and further relief as the Court may deem just and equitable under the circumstances.

THIRD COUNT

18. Plaintiff repeats and realleges the allegations set forth in the above paragraphs as if set forth at length herein.
19. Plaintiff, Gerald Nunnery, is an African American male. Plaintiff was the first African-American officer employed by the BDP and is currently the only African-American officer holding a supervisory rank in the BPD.
20. Plaintiff complained to his prior Chief about inappropriate racially disparaging comments, racial discrimination and disparate treatment he was being subjected to at the hands of his superior Captain Todd Koller, who specifically told him that he would not "go any further in the department" if he voiced complaints about racial discrimination. Although an Internal Affairs investigation was conducted, no charges were ever filed and instead the culpable parties were protected by the Township and the BDP who directly condoned and participated in the misconduct by allowing the aforesaid conduct to continue.

21. Plaintiff to date, despite being the most qualified and having one of the highest levels of educational degrees, the plaintiff continuously denied promotional opportunities and choice assignments that would benefit his career due solely to his race and as retribution for voicing valid complains of being subjected to a racially hostile work environment.
22. For all relevant purposes, Sgt. Nunnery is an employee of the BPD, and the BPD is the employer of the plaintiff.
23. For all relevant purposes, the Township, the Mayor, the Chief, the BPD, and all of its employees here acted within the actual scope of their employment. The Township and the BPD knew or should have known about the discriminatory actions of its employees.
24. Race is not a bona fide occupational qualification for any position or promotional rack for which the plaintiff has applied.
25. The Bridgewater Police Department is liable for the acts of its employees pursuant to the doctrine of *Respondeat Superior*. Moreover, the custom, policy, and practices of the employer caused plaintiff to be harmed.
26. As a direct result of the actions of defendants in violation of the NJLAD, N.J.S.A. 10:5-1, et seq., plaintiff has been deprived of his employment rights and other rights, has lost wages and benefits, and other emoluments of the position denied and was wrongfully passed over for a promotion. Plaintiff has sustained injury to his reputation and employability. Plaintiff has also suffered emotional distress, pain, and suffering. Further, Plaintiff has been compelled to retain an attorney to vindicate his rights. Additionally, Plaintiff has been otherwise injured.

WHEREFORE, Plaintiff, Gerald Nunnery, demands judgment against defendants as follows:

- (a) Reversing and rescinding the promotions of Lt. Hollander and Lt. Wilt on October 8, 2008;
- (b) Reversing and rescinding any expenditures or benefits based upon any improper promotions;
- (c) Awarding plaintiff compensatory and punitive damages, attorneys fees and costs of suit pursuant to N.J.S.A. 34:19-1, et seq., and based upon the defendants' purposely wrongful conduct, and awarding interest, fines, and penalties against defendants;
- (d) Revising and changing the promotional process so that it comports with due process and is not arbitrary and capricious; and
- (d) Awarding such other and further relief as the Court may deem just and equitable under the circumstances.

FOURTH COUNT

27. Plaintiff repeats and realleges the allegations set forth in the above paragraphs as if set forth at length herein.

28. Defendants Mayor Flannery and Chief Borden violated plaintiff's rights guaranteed by the NJLAD, N.J.S.A. 10:5-1 and 10:5-12, et seq. These individual defendants committed unlawful employment practices by knowingly giving substantial assistance and encouragement to the unlawful conduct by aiding and abetting the discriminatory employment practices against the plaintiff because of his race, and by aiding and abetting

the harassment of plaintiff and subjecting him to a racially hostile work environment which adversely affected his ability to perform his job and denied him promotional opportunities.

29. The individual defendants acted deliberately and with malicious animus and exhibited a reckless and callous indifference to plaintiff's rights through their purposeful actions, willful misconduct and evil motive and are all supervisors and agents of Bridgewater Township and the Bridgewater Police Department. Moreover, the custom, policy, and practice of the employer caused plaintiff to be harmed.

30. Accordingly, the individual defendants are liable as is the defendant employer, the Township and the BPD, who was responsible for the conduct of its agents and employees.

31. As a direct result of the actions of defendants in violation of the NJLAD, N.J.S.A. 10:5-1, et seq., plaintiff has been deprived of his employment rights and other rights, has lost wages and benefits, and other emoluments of the position denied and was wrongfully passed over for promotion. Plaintiff has sustained injury to his reputation and employability. Plaintiff has also suffered emotional distress, pain, and suffering. Further, Plaintiff has been compelled to retain an attorney to vindicate his rights. Additionally, Plaintiff has been otherwise injured.

WHEREFORE, Plaintiff, Gerald Nunnery, demands judgment against defendants as follows:

- (a) Reversing and rescinding the promotions of Lt. Hollander and Lt. Wilt on October 8, 2008;

- (b) Reversing and rescinding any expenditures or benefits based upon any improper promotions;
- (c) Awarding plaintiff compensatory and punitive damages, attorneys fees and costs of suit pursuant to N.J.S.A. 34:19-1, et seq., and based upon the defendants' purposely wrongful conduct, and awarding interest, fines, and penalties against defendants;
- (d) Revising and changing the promotional process so that it comports with due process and is not arbitrary and capricious; and
- (d) Awarding such other and further relief as the Court may deem just and equitable under the circumstances.

FIFTH COUNT

32. Plaintiff repeats and realleges the allegations set forth in the above paragraphs as if set forth at length herein.
33. Plaintiff complained to superior officers about the discrimination and the disparate treatment he endured and was retaliated against for voicing complaints about his racially hostile work environment.
34. Plaintiff was subjected disparate treatment in the workplace, and was passed over for a promotion. He was thus retaliated against for his valid complaints about being the victim of racial discrimination in the workplace.
35. As a direct result of the actions of defendants in violation of the NJLAD, N.J.S.A. 10:5-1, et. seq., plaintiff has been deprived of his employment rights and other rights, has lost wages and benefits, and other emoluments of the position denied and was passed over for

promotion. Plaintiff has sustained injury to her reputation and employability. Plaintiff has also suffered emotional distress, pain, and suffering. Further, Plaintiff has been compelled to retain an attorney to vindicate his rights. Additionally, Plaintiff has been otherwise injured.

WHEREFORE, Plaintiff, Gerald Nunnery, demands judgment against defendants as follows:

- (a) Reversing and rescinding the promotions of Lt. Hollander and Lt. Wilt on October 8, 2008;
 - (b) Reversing and rescinding any expenditures or benefits based upon any improper promotions;
 - (c) Awarding plaintiff compensatory and punitive damages, attorneys fees and costs of suit pursuant to N.J.S.A. 34:19-1, et seq., and based upon the defendants' purposely wrongful conduct, and awarding interest, fines, and penalties against defendants;
 - (d) Revising and changing the promotional process so that it comports with due process and is not arbitrary and capricious; and
36. (d) Awarding such other and further relief as the Court may deem just and equitable under the circumstances.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R.4:25-4, **GINA MENDOLA LONGARZO**, is designated as trial counsel.

DEMAND FOR TRIAL BY JURY

Please take notice that the Plaintiff, **GERALD NUNNERY**, demands a trial by jury.

LAW OFFICES OF GINA MENDOLA
LONGARZO, LLC

By: _____
GINA MENDOLA LONGARZO, ESQ.
Attorneys for Plaintiff
GERALD NUNNERY

Dated: December 1, 2008

CERTIFICATION PURSUANT TO RULE 4:5-1

I hereby certify, pursuant to R. 4:5-1, that the present matter in controversy is not the subject of any other action pending in any court, nor is any other action or arbitration proceeding contemplated.

LAW OFFICES OF GINA MENDOLA
LONGARZO, LLC

By: _____
GINA MENDOLA LONGARZO, ESQ.
Attorneys for Plaintiff
GERALD NUNNERY

Dated: December 1, 2008

PROOF OF MAILING/CERTIFICATION

I hereby certify that an original and copy of the within Complaint, Designation of Trial Counsel and Jury Demand was filed with the Clerk of Morris County as deputy Clerk of the Superior Court of Morris, New Jersey.

I hereby certify, pursuant to R.4:5-1, that the present matter in controversy is not the subject of any other action pending in any court, nor is any other action or arbitration proceeding contemplated.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

LAW OFFICES OF GINA MENDOLA
LONGARZO, LLC

By: _____
GINA MENDOLA LONGARZO, ESQ.
Attorneys for Plaintiff
GERALD NUNNERY

Dated: December 1, 2008

OPRA Request

Somerset County JIF

Submitted on 2/15/11 via E-mail to mjhydro@njrm.com

To the Custodian of Records: Please accept this as my request for government records. Please note that the Open Public Records Act (OPRA) is not the only basis for my request. I claim entitlement to the records sought under both OPRA and the Common Law right of access.

Requestor's Name: John Paff
Address: DO NOT use regular mail either for replying to this request or or sending me the responsive records.
Please use e-mail or fax instead.
Phone: 732-873-1251
FAX: 908-325-0129
E-Mail: paff@pobox.com

Background:

I am informed that on or about 12/17/10 the Township of Bridgewater and your JIF settled a civil lawsuit captioned Gerald Nunnery v. Bridgewater bearing docket or case number SOM-L-1858-08.

Records Requested:

The agreement that sets forth the terms and amount of settlement, i.e. the "settlement agreement" related to the above cited case.

NEW JERSEY RISK MANAGERS & CONSULTANTS, INC.

A rectangular stamp with a thin black border containing the word "FAX" in large, bold, black, sans-serif capital letters on a light gray background.

DATE: February 17, 2011
TO: John Paff
FAX NUMBER: 908-325-0129
FROM: Maryjane Hydro, Director of Operations
RE: SOMERSET COUNTY JOINT INSURANCE FUND
PAGES: 1, including cover

Mr. Paff,

I have been advised by counsel that “a settlement agreement” is still being negotiated and as such has not been executed by the parties. As a legal matter, a “settlement agreement” does not exist until it is executed by the parties to the litigation. While the parties have reached an agreement in principle and informed the Court of same, the settlement agreement has not been finalized as to its terms.

Therefore, at this time, it is not possible to respond to your OPRA request because an enforceable agreement, i.e., one executed by the parties, does not exist.

Since the parties are still in the process of finalizing terms and conditions, I would advise that you renew your records request once the agreement has been executed, and the Somerset County Joint Insurance Fund will be happy to respond to your request in a timely fashion.

Sent via fax and e-mail to paff@pobox.com