

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

TRIAL COURT OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

DOCKET NO. 22-2751H

MICHAEL BROWDER, JR.,)

Plaintiff,)

v.)

CITY OF BOSTON,)

Defendant.)

COMPLAINT and DEMAND
FOR JURY TRIAL

THE PARTIES

1. At all times hereinafter mentioned, the Plaintiff, MICHAEL BROWDER, JR. ("Browder" or "Plaintiff"), was and now is a citizen of the United States with a domicile located at Mattapan, MA 02126.
2. The Defendant, City of Boston, is a body politic having its principal office at 1 City Hall Square, Boston, MA 02118.
3. Boston Fire Department, is a municipal department of the Defendant City of Boston, having its principal office at Boston Fire Department Headquarters, 115 Southamptn Street, Boston, MA 02118.

THE FACTS

4. The Plaintiff was employed as a Firefighter for the City of Boston since April of 2007.

SUFFOLK SUPERIOR COURT
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MICHAEL JOSEPH DONOHUE
CLERK / MAGISTRATE

5. On or about August 12, 2021, Defendant announced that it would be implementing a COVID-19 ("Testing Policy") requiring all employees to be tested for or vaccinated against the COVID-19 virus as a condition of their employment.
6. The Testing Policy included a process to request religious exemption from testing.
7. On September 27, 2021, Plaintiff, a former Veteran, Black Male, Muslim submitted his Religious Exemption, to be exempt from the COVID-19 testing due to his sincerely held religious beliefs. Plaintiff received no response to his request until he initiated a follow-up.
8. In such request, Plaintiff requested accommodations of: 1) completing a self-monitoring form each morning and night while on duty; 2) taking his temperature before completing the form and reporting his findings; and 3) utilizing face coverings and other PPE while on duty.
9. On October 7, 2021, Defendant responded to Plaintiff's follow-up with notice that Defendant required additional information and the form sent to Plaintiff was returned that day.
10. On October 7, 2021, Defendant entered into a Memorandum of Agreement with Plaintiff's union accepting the above testing policy.
11. On October 27, 2021, Plaintiff was placed on unpaid administrative leave for allegedly being non-compliant with the Testing Policy, despite Defendant failing to rule on Plaintiff's request for religious exemption.
12. On October 29, 2021, Defendant denied Plaintiff's request for religious exemption and advised Plaintiff that he was being placed on unpaid administrative leave retroactive to October 27, 2021.

13. On October 31, 2021, Plaintiff appealed Defendant's decision remaining on unpaid administrative leave.
14. On December 20, 2021, Defendant announced a new unilateral policy requiring employees to verify their COVID-19 vaccination status ("Vaccine Policy") and to take and be subjected to the COVID-19 vaccine as a condition of employment by January 15, 2022, a Hobson's Choice.
15. The Vaccine Policy also provided a process for requesting a religious exemption.
16. On January 3, 2022, the Vaccine Policy was suspended by Court action and the Testing Policy was reinstated.
17. In or about October 2021, Plaintiff was relieved of duty and effectively terminated as the City of Boston denied his religious exemption.
18. Upon information and belief, other similarly situated employees of Defendant were not placed on unpaid administrative leave while their situations were determined.
19. Upon information and belief, Plaintiff was the only Black firefighter employed by Defendant who was disciplined by the subject policies.
20. Upon information and belief, once a significant number of non-Black employees were facing disciplinary action under said policies, Defendant issued extensions to compliance for said non-Black employees while continuing to imprison Plaintiff in the purgatory of unpaid administrative leave.
21. Effectively, placement in a boundless unpaid administrative leave is tantamount to termination.
22. As a result, Plaintiff had no trust or confidence that he would be treated fairly or justly because the Defendant failed to follow protocol and made disparaging

remarks about him. Plaintiff then notified all parties that he was withdrawing his union grievances for these reasons.

23. Plaintiff further contends that he filed for unemployment on November 16, 2021, and he was denied. He appealed on December 17, 2021, and his denial was overturned on January 29, 2022.
24. Plaintiff made a complaint with the EEOC on or about November 22, 2021. His Hearing with the EEOC was on February 16, 2022. EEOC states that it is unable to conclude that the information establishes a violation of Federal law on the part of the City of Boston and that this does not certify that the City of Boston is in compliance with the statutes. Plaintiff received a Right to Sue Letter on September 7, 2022, a copy of which is attached.
25. As a result of Defendant's actions, Plaintiff has suffered great financial and emotional distress. The Defendant's decision regarding disciplinary action embarrassed the Plaintiff and was made publicly in front of all his colleagues at the Fire House.
26. Plaintiff has suffered personal hardship and stress on his family and his marriage due to the Defendant's discriminatory practices. Plaintiff continues to suffer the physical effects of stress because of this including headaches, restlessness, exhaustion, and sleeplessness.
27. Plaintiff was openly ridiculed for his religious beliefs via email by the Union President directly to the Deputy Chief of Personnel and neither the Deputy Chief nor the City took any corrective action.

28. When Plaintiff filed for Unemployment, the same City of Boston Office of Human Resources that denied his request for accommodation sent an email to him stating that they would act to prevent the processing of his unemployment claim.
29. Plaintiff's loss of income caused a disruption in financial obligations causing him to attend Court hearings to address the income loss.
30. Plaintiff's effective termination has caused him to lose retirement benefits because he was not yet fully vested.
31. Plaintiff subsequently has been on numerous job interviews to no avail. He has been unable to find new employment and has been out of work for 349 days and continuing.
32. Plaintiff had applied for a NH Fire Investigator job posting on August 7, 2022. He took the physical fitness test, passed it, and took the written exam and passed. He then advanced to the three-member oral board and then was advised that he was advancing to meet with the agency directors. After the interview with agency directors, Plaintiff then received an email from the Deputy Fire Marshal advising that it had been decided that he would not be continuing in the hiring process. Plaintiff believes that he was rejected by the NH Fire Marshal's Office because of Defendant's disparagement.

COUNT I
DETRIMENTAL RELIANCE / PROMISSORY ESTOPPEL

33. The Plaintiff re-alleges the foregoing Paragraphs 1-32 as if set forth again here.
34. The Plaintiff relied on the promises of the Defendant, all to his great detriment.

COUNT II
INTENTIONAL MISREPRESENTATION / DECEIT

35. The Plaintiff re-alleges the foregoing Paragraphs 1-34 as if set forth again here.
36. Defendant, through its agents, intentionally and knowingly made false representations to the Plaintiff, and Defendant misrepresented the meaning of certain documents, Department conditions and ongoing Department practices.
37. Plaintiff relied on Defendant's material misrepresentations to his detriment.
38. Plaintiff, by relying on Defendant's misrepresentations, lost his employment, and lost any income generated therefrom, as well as future earnings and pension benefits.
39. There was a process for filing an accommodation and Plaintiff's accommodation was wrongfully denied.

COUNT III
NEGLIGENCE

40. The Plaintiff re-alleges the foregoing Paragraphs 1-39 as if set forth again here.
41. Defendant through its agents negligently misrepresented to Plaintiff the Defendant's Department conditions, and Department policies.
42. Plaintiff relied on said misrepresentations to his detriment.
43. As a result of said misrepresentations, Plaintiff lost his established employment and the income generated therefrom, as well as future earnings and pension benefits.

COUNT IV
TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIP

44. The Plaintiff re-alleges the foregoing Paragraphs 1-43 as if set forth again here.

45. Defendant tortiously caused interference with Plaintiff's union, his income and pension benefits, by denying his religious exemption to not get the COVID-19 Vaccine, causing him to be wrongfully relieved of duty and effectively terminated from his job.

COUNT V
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

46. The Plaintiff re-alleges the foregoing Paragraphs 1-45 as if set forth again here.

47. The Defendant's intentional conduct of fraudulently inducing Plaintiff to rely on its misrepresentations to his detriment and by intentionally denying his religious exemption to COVID-19 testing, was extreme and outrageous beyond all possible bounds of decency, and the type of conduct that is utterly intolerable.

48. The Defendant, with its retaliatory actions, intended to cause the Plaintiff to suffer severe emotional distress and/or knew or should have known, that severe emotional distress was likely to result based on its aforementioned conduct.

49. The actions of the Defendant were of such an egregious nature that no reasonable person should anticipate or be required to endure.

50. Plaintiff relied on said misrepresentations to his detriment.

51. As a result of said misrepresentations, Plaintiff has suffered depression, anxiety, loss of trust in people, loss of trust in the Defendant as an employer, low confidence and has experienced extreme mental anguish.

COUNT VI
GOOD FAITH AND FAIR DEALING

52. The Plaintiff re-alleges the foregoing Paragraphs 1-51 as if set forth again here.

53. The Defendant wrongfully effectively terminated Plaintiff's employment, wrongly relieved him of duty, and caused him financial loss of income, pension benefits and mental distress because of his religious beliefs.

54. Said actions by Defendant were wrongful, intentional, and against public policy.

55. Defendant violated its duty of good faith and fair dealing.

COUNT VII
ASSAULT

56. The Plaintiff re-alleges the foregoing Paragraphs 1-55 as if set forth again here.

57. The actions of the Defendant placed the Plaintiff in fear and apprehension of imminent bodily harm.

WHEREFORE, PLAINTIFF PRAYS THAT THIS HONORABLE COURT:

Enter Judgment against the Defendant, finding that the Defendant's conduct was knowingly and intentionally made in bad faith, with knowledge or reason to know that its acts would cause substantial hardship to the Plaintiff, was against public policy and common law, and submits a request for damages as follows:

1. Eight Million Three Hundred Forty-Two Thousand and Sixty-Eight Dollars (" \$8,342,068.00") for consequential damages and costs;
2. For general damages in an amount to be determined for emotional distress, embarrassment, humiliation, anxiety, sleeplessness, and emotional trauma.
3. For all reasonable attorney's fees;
4. For all applicable interests and related costs;
5. For the costs of suit incurred herein, and;
6. For all other relief this Honorable Court deems meet, and just.

The Plaintiff demands a trial by jury on all counts.

Respectfully submitted,
The Plaintiff,
MICHAEL BROWDER, JR.,
By his attorneys,

DATED: 12-6-22

/s/ Richard C. Chambers, Jr., Esq.
Richard C. Chambers, Jr., Esq.
BBO#: 651251
Chambers Law Office
220 Broadway, Suite 404
Lynnfield, MA 01940
Office: (781) 581-2031
Cell: (781) 363-1773
Fax: (781) 581-8449
Email:
richard@chamberslawoffice.com

DATED: 12-6-22

/s/ Joseph Spinale, Esq.
Joseph Spinale, Esq.
BBO#: 548547
Chambers Law Office
220 Broadway, Suite 404
Lynnfield, MA 01940
Office: (781) 581-2031
Cell: (781) 838-1411
Fax: (781) 581-8449
Email: Joe@chamberslawoffice.com