

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AL-FARID SALAHUDDIN

Plaintiff,

20 Civ. ()

-against-

COMPLAINT

CITY OF MT. VERNON N.Y. FIRE
DEPARTMENT and CITY OF MOUNT
VERNON, NEW YORK,

Jury Trial Demanded

Defendants.

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Plaintiff AL-FARID SALAHUDDIN, by his attorneys Gould & Berg, LLP, for his complaint respectfully states:

NATURE OF THE ACTION

1. This is an action for injunctive relief and compensatory damages proximately resulting from the Defendants' conduct engaged in under color of the laws of the State of New York, for violations of Plaintiff's rights as guaranteed him by the Fourteenth Amendment to the United States Constitution, 42 U.S.C. §1983.

JURISDICTION

2. The Court's jurisdiction is invoked pursuant to 28 U.S.C. §§1331, 1343.

THE PARTIES

3. Plaintiff AL-FARID SALAHUDDIN is a citizen of the United States, a domiciliary of the State of New York, and a resident of the City of Mt. Vernon which lies within the Northern Counties. At all times relevant to this complaint, Plaintiff was

employed as a sworn member of the Defendant City of Mt. Vernon in Defendant City of Mt. Vernon's Fire Department.

4. Defendant CITY OF MOUNT VERNON, New York (hereinafter "City") is a municipal corporate subdivision of the State of New York, duly existing by reason of and pursuant to the laws of said State. Defendant CITY OF MT. VERNON N.Y. FIRE DEPARTMENT is organized under the Defendant City's Charter Article X-A Section 127, et. seq.

THE FACTS

5. Plaintiff has been employed by Defendants as a competitive civil service employee since his initial hire on November 17, 1980. Plaintiff was initially hired off of a civil service eligible list to the position of Firefighter and subsequently promoted off promotional civil service eligible lists to the positions of Lieutenant, Captain, and Deputy Chief. Plaintiff obtained permanency in each of the aforementioned positions of employment having passed the requisite probationary period.

6. Plaintiff currently serves in the position of Deputy Chief, a position which he has held since his promotion on August 8, 2016. In that connection, he has acquired permanent civil service status in this position, together with the rights to all pay and benefits appurtenant thereto, by reason of New York State Civil Service Law §75.

7. As a matter of past practice and policy, Plaintiff is entitled to receive the following remuneration and other benefits for his service as Deputy Chief:

- a. Base salary;
- b. Longevity pay, paid twice a year;
- c. Holiday pay for set holidays;

- d. Significant overtime pay which was earned on a routine basis by all members of the Fire Department, including Plaintiff;
- e. EMT Responder stipend;
- f. Accrual of paid time off (sick, vacation, personal) which, if unused, Plaintiff could cash out at retirement;
- g. Defendants' contributions to Plaintiff's retirement account with the New York State Police and Fire Retirement System;
- h. Years of credited service, or pro rata portions therefore, applied to Plaintiff's New York State Police and Fire Retirement System account; and
- i. Years of credited service, or pro rata portions thereof, for purposes of determining and establishing Plaintiff's level of seniority in the Defendant Fire Department.

8. On or about September 7, 2019, Plaintiff was placed on administrative leave with pay pending an investigation by Defendants into unspecified allegations. Plaintiff was advised that this could lead to disciplinary action.

9. On October 1, 2019, Defendants' Chief of Operations, Edward Stevenson, notified Plaintiff in writing that Plaintiff was placed on unpaid suspension effective immediately pursuant to Chapter 39 of the Fire Department's Rules and Regulations. This notification prohibited Plaintiff from appearing at any fire station or headquarters during his suspension and removed the obligation that he report to the Chief's office during his suspension as was otherwise required by Section 3 of Chapter 39.

10. Disciplinary charges were neither preferred nor served upon Plaintiff. Nor were any specifics provided to Plaintiff as to the scope of the investigation or reason for the unpaid suspension.

11. As a result of his permanent, protected, status as a Deputy Chief, and by reason of his property right in his position of employment with Defendants, Defendants were not permitted to discipline Plaintiff in the form of a reprimand, withholding of pay, or termination without first satisfying the requirements of providing Plaintiff notice of the specific allegations/charges, an opportunity to be heard and securing a finding of guilt after a trial or hearing.

12. Chapter 40 of the Fire Department's Rules and Regulations provides: "Any member of the Department found guilty, after trial, of violating any command, order, instruction, or rule, governing the Uniformed Force, or any law, may be reprimanded, fined by the withholding of pay, be dismissed from the Department, or have the sentence suspended, as the Fire Commissioner may determine." (emphasis added)

13. Similarly, Section 75(3) of the New York State Civil Service Law provides: "Suspension pending determination of charges; penalties. Pending the hearing and determination of charges of incompetency or misconduct, the officer or employee against whom such charges have been preferred may be suspended without pay for a period not exceeding thirty days. If such officer or employee is found guilty of the charges, the penalty or punishment may consist of a reprimand, a fine not to exceed one hundred dollars to be deducted from the salary or wages of such officer or employee, suspension without pay for a period not exceeding two months, demotion in grade and title, or dismissal from the service; provided, however, that the time during which an

officer or employee is suspended without pay may be considered as part of the penalty. If he is acquitted, he shall be restored to his position with full pay for the period of suspension less the amount of any unemployment insurance benefits he may have received during such period.”

14. Similarly, Article X-A, Section 127-b, of the Defendant City of Mount Vernon City Charter provides: “The Fire Commissioner shall make, adopt, and enforce such reasonable rules, orders and regulations, not inconsistent with law...He is authorized to make, adopt, promulgate and enforce reasonable rules, orders and regulations for the government, discipline, administration and disposition of the officers and members of the Fire Department and for the hearing, examination, investigation, trial and determination of charges made or prepared against any officer or member of said Department for neglect of official duty or incompetency or incapacity to perform his official duties or some delinquency seriously affecting his general character or fitness for the office, and may punish any such officer or member found guilty thereof by reprimand, forfeiting and withholding pay for a specified time, suspension during a fixed period or dismissal from office but no officer or member of said Department shall be removed or otherwise punished for any other cause, nor until specific charges in writing have been preferred against and served upon him, and he shall have been found guilty thereof after reasonable notice and upon due trial before said Commissioner in the form and manner prescribed by law and the rules and regulations of the Department.” (emphasis added).

15. Similarly, City Charter Article X-A, Section 127e, states: If a charge be made by any person against any officer or member of the Fire Department that he has been negligent or derelict in the performance of his official duties, or is incompetent or

without capacity to perform the same, or is guilty of some delinquency seriously affecting his general character or fitness for the office, the charge must be in writing...and a copy therefor must be served upon the accused officer of member. The Commissioner shall then proceed to hear, try and determinate the charge. The accused shall have the right to be present at his trial, and to be heard in person and by counsel and to give and furnish evidence in his defense...If the accused is found guilty of the charge made against him the Commissioner may punish him by reprimand, by forfeiting and withholding pay for a period not to exceed 30 days, or by dismissal from office.”

16. Contrary to the New York State Civil Service Law and the City of Mt. Vernon Charter provisions cited herein:

- a. Defendants never preferred or served Plaintiff with written charges.
- b. Defendants never provided Plaintiff with any due process, pre-deprivation or post-deprivation, in the form of written charges, a trial/hearing with an opportunity to be heard or to present a defense.
- c. No finding was ever issued adjudging Plaintiff guilty of any misconduct, incompetency or incapacity.
- d. No finding was ever issued from which Plaintiff could appeal or seek review.

17. As a proximate result of Defendants’ unlawful conduct, Plaintiff remained on unpaid suspension from October 1, 2019 through January 15, 2020 as a result of which he suffered significant compensatory losses and in connection with which Defendants continue to refuse to make him whole. Defendants’ conduct constitutes unlawful disciplinary action against Plaintiff depriving him of his statutorily protected

property rights, as set forth in paragraph 7, *supra*, for the period October 1, 2019 to January 15, 2020, without ever affording him any legally mandated due process protections

18. To that end, on January 15, 2020, Fire Commissioner Deborah M. Norman advised Plaintiff: “After a careful review of the facts and circumstances surrounding your suspension without pay, and the fact that the investigation conducted by the prior administration failed to yield any disciplinary charges, you are hereby immediately reinstated to your position of Deputy Chief.”

19. Thus, admitting in January 2020 that no charges resulted for the period of unpaid suspension, and without affording him any pre or post deprivation due process, Defendants have refused to reimburse Plaintiff for deprivation of his property rights, including lost salary, longevity pay, holiday pay, overtime, EMT stipend, paid time off accruals, employer contributions to the retirement system, three and one half months of lost time toward his years of service with the New York State Police and Fire Retirement System and toward his seniority within the Defendant Fire Department.

20. Although Plaintiff reached out to Defendant City of Mt. Vernon’s Corporation Counsel, Brian Johnson, in an effort to obtain reimbursement for these unlawfully withheld sums, on or about July 9, 2020, Corporation Counsel Johnson advised that efforts to resolve the matter amicably have failed.

21. As a proximate result of Defendants’ unlawful conduct Plaintiff has been deprived of his property without due process of law thereby causing him financial loss in the form of lost: base salary, overtime, longevity pay, holiday pay, EMT stipend, accrual of paid time off, employer contributions to his New York State Police and Fire

Retirement account for the period of unpaid suspension, credited service to his time in the New York State Police and Fire Retirement System, and credited service to his time for purposes of seniority. Plaintiff has also been rendered anxious; caused pain, suffering and emotional upset; and otherwise rendered sick and sore.

AS AND FOR A FIRST CLAIM

22. Repeats and realleges as if fully set forth the allegations of fact contained in paragraphs “1” to “21”, inclusive.


23. Under the premises Defendants’ conduct denied Plaintiff the right to Due Process as guaranteed by the Fourteenth Amendment to the United States Constitution, 42 U.S.C. §1983.

WHEREFORE a judgment is respectfully demanded:

- a. Awarding as against Defendants such compensatory damages as the jury may determine for Plaintiff’s lost pay, longevity, holiday, overtime, and EMT stipend, for the period October 1, 2019 to January 15, 2020, together with interest from October 1, 2019,
- b. Directing Defendants to reflect Plaintiff, on its books and records, as being actively employed with pay and benefits for the period October 1, 2019 to January 15, 2020,
- c. Directing Defendants to provide Plaintiff with all paid time off accruals to which he was entitled for the period October 1, 2019 to January 15, 2020.

- d. Directing Defendants to pay into Plaintiff's New York State Police and Fire Retirement account all employer contributions for the period October 1, 2019 to January 15, 2020 or in the alternative paying Plaintiff for the lost retirement contributions and damages caused over his lifetime;
- e. Directing Defendants to report to New York State that Plaintiff was employed with pay for the period October 1, 2019 to January 15, 2020 and take all measure required to ensure Plaintiff receives the appropriate service credit towards his years of service with the Retirement System;
- f. Directing Defendants to adjust Plaintiff's seniority within the Fire Department to include the period of time from October 1, 2019 to January 15, 2020 in his seniority calculation;
- g. Awarding as against Defendants reasonable attorney's fees and costs, and,
- h. Granting such other and further relief as to the Court seems just and proper.

Dated: White Plains, N.Y.
August 28, 2020

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