

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PHIL D. KAMM,

Plaintiff,

Case No.

Hon:

v

CITY OF YPSILANTI, a municipal corporation, BETH BASHERT, in her individual capacity, LOIS RICHARDSON, in her individual capacity, NICOLE BROWN, in her individual capacity, JENNIFER SYMANNS, in her individual capacity, STEVE WILCOXEN, in his individual capacity, and ANTHONY MORGAN, in his individual capacity.

Defendants.

James K. Fett (P39461)
Fett & Fields, P.C.
805 E. Main St.
Pinckney, MI 48169
734-954-0100
Fax: 734-954-0762
attys@fetlaw.com
Attorneys for Plaintiff

PLAINTIFF'S COMPLAINT AND JURY DEMAND

Plaintiff Phil D. Kamm, through his counsel, Fett & Fields, P.C., states the following claims against Defendants:

NATURE OF CLAIM

1. This is an action for damages to remedy blatant race discrimination by Defendants who refused to hire the most qualified Fire Chief applicant because he is white; the case is brought under the Fourteenth Amendment, 42 U.S.C. §1983.

JURISDICTION AND PARTIES

2. Plaintiff invokes the jurisdiction of this Court pursuant to 28 U.S.C §§1331, 1333(a)(3), 1333(a)(4), and 28 U.S.C. §1337.

3. Plaintiff is a white male, a citizen of the United States and the State of Michigan and resides in Northville, Michigan.

4. Defendant City of Ypsilanti is a municipal corporation located in Washtenaw County Michigan.

5. Defendant Beth Bashert (“Bashert”) is the duly elected Mayor of Defendant City of Ypsilanti.

6. Defendant Lois Richardson (“Richardson”) is the duly elected Mayor Pro-Tem of Defendant City of Ypsilanti.

7. Defendants Nicole Brown (“Brown”), Jennifer Symanns (“Symanns”), Steve Wilcoxon (“Wilcoxon”), and Anthony Morgan (“Morgan”) are duly elected City Council members of City of Ypsilanti. Peter Murdock was a council member at the time this claim arose but is now deceased.

8. The events giving rise to this cause of action occurred in the Eastern District of Michigan.

9. The amount in controversy exceeds \$75,000.00, exclusive of interest, costs and attorney fees.

COMMON ALLEGATIONS

10. Plaintiff has, at all times relevant to this action, been Fire Captain for the Livonia Fire Department.

11. Plaintiff has a Bachelor's in Business Administration degree from the University of Michigan, a Masters of Public Administration degree from Eastern Michigan University, and is a graduate of the Fire Staff and Command program at Eastern Michigan University.

12. Plaintiff has had a stellar career and was the most qualified candidate for Ypsilanti Fire Chief; his credentials include, but are not limited to:

- a. Service on Livonia's Fire and EMS Committee, where he has written protocols for Police, Fire, and others related to daily duties of municipal employees.
- b. 11 years of service as a Tactical Medic on Livonia SWAT and Western Wayne County Special Response Team.
- c. Service as a Tactical Rappel Master, where he instructs both Police Officers and Firefighters.
- d. Service as a State of Michigan Firefighter Instructor at Schoolcraft College's Fire Academy.
- e. Service as the Grant Writer for the Livonia Fire Department, where he has secured \$4 million in grants, and much more for jurisdictions outside of Livonia, including a \$250,000 grant for a robot for the Western Wayne County Hazmat Team, fire engines for Dearborn Heights and Lansing, turnout gear for Manchester, and a safety house for Garden City.

13. In August of 2018, Defendant City of Ypsilanti sought applications to fill its vacant Fire Chief position.

14. Plaintiff submitted his application and formally applied for the position that same month.

15. Plaintiff participated in third-party testing and evaluation for the Fire Chief position in December of 2018 and January 2019.

16. Plaintiff interviewed with Rebecca Craigmile (“Craigmile”), Director of Human Resources, and Catherine Harman, the Garden City Fire Chief and a Shift Captain for the Ypsilanti Fire Department on January 25, 2019.

17. Plaintiff interviewed with Darwin McClary (“McClary”), Ypsilanti City Manager and Craigmile on February 20, 2019.

18. McClary contacted Plaintiff on March 1, 2019 and offered him the position of Ypsilanti Fire Chief.

19. Plaintiff verbally accepted the position of Fire Chief that day.

20. Also, on Friday, March 1, 2019, McClary sent out an email, informing Interim Fire Chief Kenneth Hobbs (“Hobbs”) and Defendants that he had chosen Plaintiff to fill the Fire Chief position.

21. On March 5, 2019, Plaintiff’s employment contract terms were finalized.

22. McClary presented the contract to City Council that night.

23. At that meeting, Defendant City Councilman Morgan and Defendant Mayor Pro-Tem Richardson took the unusual act of stepping down from their seats to demonstrate their outrage over McClary not hiring a black candidate.

24. Defendant Morgan stated, “I stand here as an ashamed citizen, I wish for a more

fair city,” and that in his time advocating for black rights, he “understand[s] civil rights and [he] understand[s] civil wrongs.”

25. Defendant Morgan then went on to state, “African Americans make up 14% of the total population, 13% of the State of Michigan, and 27% of Ypsilanti, if we don’t represent these numbers fairly we are just doing it.”

26. Defendant Richardson stated, “I have been mourning since Friday, when I got the email stating that racism and bigotry” are at the roots of the city, “every black person in here knows, I bet this is nothing but racism,” and that she was calling “the race card because that’s exactly what it is.”

27. Defendant Richardson then went on to state, “every black person in here knows we work on jobs” and “all of a sudden some little new person is brought in” and “they take a promotion that was ours,” and that African-American Interim Chief Hobbs had deserved the job but “racism raised its ugly head, its nothing but racism people.”

28. Defendant Richardson then concluded, “I thought we were progressive because we have a gay married City Manager, we have a gay married Mayor, and we have a gay married Council Person, but we cannot have a black Chief.”

29. At this point, there had been no inquiries into the charge of racism in the hiring.

30. In fact, no City Council Member ever approached McClary about the issue.

31. These comments were based solely on the fact that Plaintiff’s skin color was white and Defendants wanted a Fire Chief that was black.

32. In point of fact, there is no evidence in modern history that Defendant City has discriminated against minorities in hiring, promotion or appointments; to the contrary, Defendant City has hired, promoted and appointed minorities in its police and fire departments for many

years.

33. On March 6, 2019, Plaintiff signed and returned the employment contract to McClary.

34. McClary telephoned Plaintiff that same day and stated the contract was still good but City Council was upset about the selection of a white candidate over a black candidate.

35. McClary further stated he expected to be fired the next day because of his decision.

36. Plaintiff sympathized with McClary over his predicament and told him he would eventually win over City Council.

37. McClary told Plaintiff he had made the right decision based on the qualifications of the candidates.

38. On March 7, 2019, Defendants Richardson, Brown, and deceased City Councilperson Peter Murdock requested a special meeting.

39. Before the meeting, a Black Lives Matter banner was hung in the chambers of City Council.

40. As stated by Defendant Richardson, the special meeting was called because there have been “some things that have gone on with the City Manager and some of his appointments – or lack thereof – and we just want to review those.”

41. Amid pressure from City Council Members, McClary offered his resignation.

42. Defendants unanimously adopted a resolution approving the resignation that night.

43. The underlying motivation behind this overhaul was to ensure a black Fire Chief was hired.

44. Hours later, acting City Manager Tony DeGiusti sent Plaintiff a letter rescinding the City’s offer.

45. At this time, there still had been no inquiry into the allegation of racism in the hiring of Plaintiff.

46. In fact, no City Council Member ever approached McClary about the issue.

47. Defendant Bashert acknowledged in her remarks that there were no inquiries when she asked “if there had been any inquiries into that charge [of racism], or Mr. McClary approached about that issue. The answer is no, no City Council Member approached him. It is always the job of elected officials to do their due diligence in investigating these claims.”

48. For his part, McClary stands by his decision, stating “I encourage anybody to look at the qualifications of the candidate that we selected … to determine who was the best candidate for the position, it was not (interim Chief) Hobbs.”

49. Defendant City ultimately on June 8, 2019 appointed Kenneth Hobbs, an African-American, to the Chief position.

COUNT I
RACE DISCRIMINATION IN VIOLATION OF 42 U.S.C. §1983
(FOURTEENTH AMENDMENT EQUAL PROTECTION)

53. Plaintiff incorporates by reference the preceding paragraphs.

54. Plaintiff is white.

55. Defendants were acting under the color of state law when they intentionally refused to hire Plaintiff due to his race.

56. Defendants deprived Plaintiff of his right to equal protection as guaranteed by the 14th Amendment to the United States Constitution.

57. Defendants are the unusual municipal officials who discriminate against the majority (i.e. white).

58. Defendants’ illegal race discrimination has caused Plaintiff damages.

WHEREFORE, Plaintiff requests that this Court award judgment against Defendants as follows:

- a. Economic damages;
- b. Non-economic damages to compensate for the mental and emotional distress, outrage, and humiliation he has suffered, and continues to suffer, as a result of Defendant's illegal actions;
- c. Costs, interest and reasonable attorney fees as provided by 42 U.S.C. §1988;
- d. Punitive damage against the individual defendants in their personal capacities; and
- e. Such other equitable relief as the Court deems just.

Respectfully submitted,

/s/ James K. Fett
By: James K. Fett (P39461)
Fett & Fields, P.C.
805 E. Main St.
Pinckney, MI 48169
734-954-0100
jim@fetlaw.com

Dated: June 20, 2019

Attorneys for Plaintiff

Affidavit of Mailing

I hereby certify that on June 20, 2019, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: **not applicable**, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: **not applicable**.

/s/ James K. Fett
James K. Fett (P39461)
Fett & Fields, P.C.
805 E. Main St.
Pinckney, MI 48169
734-954-0100
jim@fetlaw.com

JURY DEMAND

NOW COMES Plaintiff Phil D. Kamm, through his counsel Fett & Fields, P.C., and hereby demands trial by jury in the above-captioned matter.

/s/ James K. Fett
By: James K. Fett (P39461)
Fett & Fields, P.C.
805 E. Main St.
Pinckney, MI 48169
734-954-0100
jim@fetlaw.com
Attorneys for Plaintiff

Dated: June 20, 2019

Affidavit of Mailing

I hereby certify that on **June 20, 2019**, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: **not applicable**, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: **not applicable**.

/s/ James K. Fett
James K. Fett
Fett & Fields, P.C.
805 E. Main St.
Pinckney, MI 48169
734-954-0100