

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
GEISHA FALU,

Plaintiff,

Case No. 16-cv-00448 (NSR)

-against-

AMENDED COMPLAINT

COUNTY OF ORANGE, STEVEN GROSS,
CARL DUBOIS, KENNETH JONES and
KENNETH DECKER, each in their individual
capacity,

Defendants.
-----x

Plaintiff, Geisha Falu, by her attorneys, SUSSMAN & WATKINS, as and for
her complaint against defendants, respectfully alleges:

NATURE OF THE ACTION

1. This is an action to redress defendants' deprivations of plaintiff's rights,
privileges and immunities as guaranteed her by reason of the Fourteenth
Amendment to the United States Constitution, made actionable against them by 42
U.S.C. § 1983.

JURISDICTION

2. This Honorable Court's jurisdiction is invoked pursuant to 28 U.S.C. §§
1331 and 1343, and 42 U.S.C. §§ 1983 and 1988.

PARTIES

3. Plaintiff, Geisha Falu ("Falu"), is a female Corrections/Peace Officer
employed by defendant County of Orange as she has been since 2001.

4. Plaintiff is a United States citizen and a domiciliary of the State of New York and resident of Sullivan County.

5. Defendant, County of Orange ("County"), is a municipal corporation which is situated in this judicial district and may sue and be sued.

6. Defendant, Steven Gross ("Gross"), a male, is a domiciliary of the State of New York and is sued in his individual capacity for violations of plaintiff's constitutional rights.

7. At all relevant times, Gross has been employed by defendant County as its Commissioner of Human Resources.

8. Gross' responsibilities include, *inter alia*:

a. insuring that all County employees receive fair, equal and non-discriminatory treatment in all aspects of employment, including training, promotion, and performance evaluation;

b. developing and implementing the County's Affirmative Action Plan;

c. developing and implementing the County's Rules for the Administration of Civil Service Law; and

d. providing training for the County's department heads in the proper administration and implementation of the County's Civil Service rules.

10. Defendant Carl Dubois ("Dubois"), a male, is a domiciliary of the State of New York and is sued in his individual capacity for violating plaintiff's constitutional rights.

11. At all relevant times, defendant Dubois has been employed by the County as its Sheriff. As the department head, Dubois is the "appointing authority," ultimately responsible for all promotional decisions within his department.

12. Defendant Kenneth Jones ("Jones"), a male, is a domiciliary of the State of New York and is sued in his individual capacity.

13. At all relevant times, defendant Jones has been employed by the County as the Undersheriff of the Sheriff's Office. Defendant Jones is responsible for the day-to-day operations of the jail and reports directly to defendant Dubois.

14. Defendant Kenneth Decker ("Decker"), a male, is a domiciliary of the State of New York and is sued in his individual capacity.

15. Upon information and belief, defendant Dubois has delegated responsibility for promotional decisions to the Corrections Administrator, defendant Decker, but, by law, approved and remains responsible for the promotions made during his watch.

FACTUAL ALLEGATIONS

15. At all relevant times, plaintiff has consistently and continually performed all the job duties and responsibilities of her position in a satisfactory manner.

16. As the County's Commissioner of Human Resources, with respect to promotional procedures, defendant GROSS was responsible for establishing eligibility lists and thereby certifying to the appointing authority a list of eligibles from which promotions were to be made in a non-discriminatory manner.

17. Further, defendant GROSS was responsible for approving an employee's temporary assignment to perform the duties of a higher classification within the Sheriff's Office.

18. As the duly elected Sheriff of the County, defendant DUBOIS is legally responsible for approving all promotions and is the County's final policy-maker with regard to promotions within his department.

19. As such, the actions of defendants DUBOIS, Undersheriff JONES and their subordinate personnel who make recommendations concerning promotions collectively represent the policy and practice of the COUNTY within the Sheriff's Office.

20. Of the correctional officers employed by the County of Orange in June 2013, 43 of 233 corrections/peace officers (or 18.5%) were female; of the supervisory personnel, only 4 of 44 ranking officers at the jail or (9.5%) were female.

21. On or about June 7, 2011, plaintiff took a promotion examination for the rank of sergeant.

22. Thereafter, and based upon the ranking of the fifty-nine persons who passed the promotional examination, defendant GROSS was required to establish an eligibility list.

23. The eligibility list GROSS established as a result of this promotion examination is dated June 7, 2011.

24. Plaintiff received a score of 85 on the 2011 promotional examination.

25. From the time GROSS created the eligibility list on or about June 6, 2011, until its expiration on June 6, 2015, defendants intentionally promoted twenty (20) males to the rank of sergeant, namely:

- Russell Potter
- Eric Colby
- Keith Conroy
- James Ryan
- Dominic Avery
- C.O. Mareno
- Mark Berlinski
- Michael Torres
- John Ryan
- William Proseia
- Joshua DeEntremont
- Keith Kiszka
- Michael Torres
- John Ryan
- Jason Kahmar
- Antonio Clarke
- Raphael Marquez
- Daniel McCord
- James Nowicki
- Louis Pascal

26. In so doing, between June 6, 2011 and June 6, 2015, Defendants GROSS violated procedural norms in the following wise:

- a. failed to certify a list of approved candidates from the eligibility list for each of the promotional opportunities which arose within the Sheriff's Office;
- b. failed to canvas approved candidates for each of the promotional opportunities that arose within the Sheriff's Office;
- c. permitted defendants DUBOIS, JONES and DECKER to make promotions directly from the eligibility list, contrary to New York Civil Service Law and defendant COUNTY's rules.

27. Further, between June 6, 2011 and June 6, 2015, Defendants DUBOIS, JONES and DECKER violated procedural norms in the following ways:

a. failed to obtain a certified list of approved candidates for each of the promotional opportunities which arose within the Sheriff's Office;

b. failed to canvas approved candidates for each of the promotional opportunities that arose within the Sheriff's Office;

c. made promotions directly from the eligibility list, contrary to New York Civil Service Law and defendant COUNTY's rules.

28. During the life of the June 7, 2011 eligibility list, defendants failed to promote any of the ten (10) qualified females from the eligibility list to the rank of sergeant.

29. During the life of the June 7, 2011 eligibility list, FALU remained on the list, was reachable for promotion under extant Civil Service rules, and denied each promotion, though she was better qualified than at least some of the males promoted.

30. No neutral, non-discriminatory reason supported defendants' failure to promote plaintiff, and a female candidate's right to equal protection under the law in promotional decisions was clearly established as of 2011.

31. At least since December 2012, defendant GROSS has been aware - or should have been aware - that defendant Dubois' policy and practice of bypassing eligible females to reach equally or less-qualified males was intended to exclude females from promotion to the rank of sergeant and was thereby intentionally

discriminatory against qualified female corrections officers and, yet, he allowed the discriminatory practice to continue, unabated.

32. No valid job-related reason exists to justify the continued use of promotion procedures that have such an adverse effect on female employees.

33. Throughout Plaintiff's employment with the County, defendants deliberately engaged in a course of conduct known to Plaintiff which created a coercive and hostile environment for female correction officers who wish to advance.

34. Specifically, defendants provided preferential assignments and treatment to, and only to, female employees who are related to male officers, or who engage in personal relationships with their superiors and denied advancement to those who do not. As examples:

a. Defendant Jones promoted Kandi Jones to the rank of sergeant. She is the only female to be promoted since the opening of the new Jail in 2001/02 – a period of 14 years. Ms. Jones was having an affair with Captain Russnak prior to, and after, her promotion in 2008;

b. Upon information and belief, in or about December 2014, Defendant Jones was instrumental in obtaining a position with Defendant County for his "girlfriend" of several years, Sheryl Thomas, as a "gun safety instructor", a position that was not advertised or first offered to the existing female staff;

c. C.O. DiChiaro, married Lt. DiChiaro and is now only required to work a preferred position in Classifications;

d. Upon information and belief, C.O. Sue Pastor had “affairs” with Sgt. Potter and Capt. Mele and, thereafter, received preferential treatment and assignments. Specifically, during her probationary period, she was not terminated after being charged with “driving while intoxicated” and instead, ordered to attend alcohol rehab. After becoming “engaged” to Capt. Mele, C.O. Pastor was made an Investigator, a position that was not offered to plaintiff or other female corrections officers.

e. C.O. Bernadette Wilson was also provided preferential treatment and assignments. After marrying Sgt. Lopez, C.O. Wilson was made an “Investigator”, a position not offered to plaintiff or other female corrections officers.

35. This pattern of preferential treatment of female employees who engage in personal relationships with their supervisors established a policy which continued over the course of years and was known to and facilitated by defendants Jones, Dubois and Decker established a policy by which female officers could advance only by engaging in such relationships.

36. As such this policy effectively altered the terms and conditions of employment of those female employees such as plaintiff who refused to engage in such relationships.

37. In short, by refusing to engage in such personal relationships as required under this *de facto* policy, female officers such as plaintiff were denied the opportunity to advance or to receive favorable assignments or other benefits of employment.

38. This gender-based policy has restricted promotional opportunities - and otherwise altered working conditions - on the basis of gender, devaluing the qualifications of plaintiff and other qualified female officers and subordinating their qualifications to their willingness, or unwillingness, as be the case, to engage in intimate personal relationships with superior officers.

39. As a proximate result of Defendants' implementation of this policy, Plaintiff has been deliberately and/or intentionally and/or recklessly caused to suffer economic loss by reason of her being passed over for promotions; caused to suffer the humiliation of being denied equal opportunity and being rejected for available advancement for which she is qualified; deprived of a workplace free from discrimination and objectification; forced to work in a discriminatory environment antithetic to her emotional, physical and financial wellbeing; and otherwise has been subjected to consequential pain and suffering.

CAUSES OF ACTION

40. Plaintiff repeats and re-alleges paragraphs 1 through 32 of this Complaint as though fully set forth herein.

41. By engaging in intentional gender-based discrimination against her, defendants, and each of them, violated the Equal Protection Clause of the 14th Amendment of the United States Constitution, as made actionable against them by 42 U.S.C. § 1983.

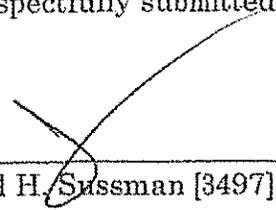
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Honorable Court:

- a. accept jurisdiction over this matter;
- b. empanel a jury to hear and decide all issues;
- c. award to plaintiff compensatory damages, including back pay with pre- and post-judgment interest, make whole relief for benefits, including pension contributions, of which plaintiff has been denied as the result of defendants' wrongful conduct;
- d. award to plaintiff compensatory damages for the humiliation and pain and suffering defendants caused her by and through their wrongful and illegal actions;
- e. order defendant Dubois to promote plaintiff to the next available opening for the rank of sergeant or require defendant County to pay plaintiff front pay, with attendant benefits applicable to the higher rank, until defendants promote her, again, with pre- and post-judgment interest;
- f. award plaintiff reasonably incurred costs and reasonable attorney fees pursuant to 42 U.S.C. § 1988; and
- g. enter any other and further relief which the Court may deem just and proper.

DATED: Goshen, New York
May 20, 2016.

Respectfully submitted,



Michael H. Sussman [3497]

SUSSMAN & WATKINS, ESQS.
Attorneys for Plaintiff
1 Railroad Avenue, Suite 3
Goshen, NY 10924
(845) 294-1623

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
VALERIE A. ZEPPELIN,

Plaintiff,

vs.

COMPLAINT

COUNTY OF ORANGE, CARL DUBOIS
and KENNETH JONES,

Defendants.
-----x

By and through her attorneys, Sussman & Watkins, plaintiff complains of defendants as follows:

I. PARTIES

1. Plaintiff, Valerie Zeppelin, is a Corrections/Peace Officer employed by the County of Orange, as she has been since 2002.
2. Plaintiff is female.
3. Plaintiff resides within this judicial district.
4. Defendant County of Orange is a municipal corporation which is situated in this judicial district.
5. Defendant Carl Dubois is the Sheriff of Orange County and has so served at all relevant times.

6. Defendant Kenneth Jones is the Undersheriff of Orange County and has so served at all relevant times.

7. Defendant Dubois has delegated responsibility for promotional decisions to Undersheriff Jones, but remains responsible by law for the promotions made under his watch and approves the same.

8. Defendant Jones supervises the day-to-day operations of the jail and makes recommendations regarding promotions to the Sheriff.

II. JURISDICTION

9. Defendant, County of Orange, is an employer within the meaning of 42 U.S.C. section 1983 and, as such, may not engage in intentional gender discrimination against women in the terms and conditions of employment.

10. As plaintiff contends that defendants intentionally discriminated against her on the basis of her gender when they denied her promotional opportunities made available to men, this Honorable Court has jurisdiction over this matter pursuant to 28 U.S.C. secs 1331 and 1343 and 42 U.S.C. sections 1983 and 1988.

III. FACTUAL ALLEGATIONS

11. As the duly elected Sheriff of Orange County, defendant Dubois is legally responsible for making such promotions and the final county policy-maker with regard to promotions within the Sheriff's Department.

12. As such, the actions of defendant Dubois and defendant Undersheriff Jones and their subordinate personnel, who make recommendations concerning promotions, collectively represent the policy and practice of the defendant County.

13. Of the correctional officers employed by the County of Orange as of June 2013, 43 of 233 corrections/peace officers or 18.5% are female; of the supervisory personnel, 4 of 44 ranking officers at the jail or 9.5% are female

14. On or about June 7, 2011, plaintiff took a promotion examination for the rank of sergeant.

15. Plaintiff received a score of 90 on the promotional examination.

16. Thereafter and based upon the test results of the fifty nine persons who took the promotional examination, defendant county's Department of Civil Service certified a list of eligibles from whom defendants were required to make appointments to the rank of sergeant using the one in three rule.

17. During the last nearly three years, plaintiff has remained on the list, been reachable for, and been denied promotions.

18. During this period, defendants have promoted two males to the rank of sergeant from the eligibility list.

19. On both occasions, defendants promoted a less well qualified male to the position plaintiff sought.

20. On December 22, 2012, defendants promoted CO Torres, a male, to the rank of sergeant.

21. Mr. Torres ranked below plaintiff on the 2011 promotional list for the position of sergeant.

22. Plaintiff had more education, more seniority and more diverse correctional experience than Mr. Torres.

23. On or about May 24, 2014, plaintiff learned that defendants had promoted another male CO Ryan to the rank of sergeant.

24. As with Mr. Torres, plaintiff's qualifications for the promotion were substantially superior to Mr. Ryan's.

25. No neutral, non-discriminatory reason supported defendants' failure to promote plaintiff and a woman's right to equal protection under the law in promotional decisions was clearly established as of 2011.

26. By dint of their failure to promote her, defendants have caused plaintiff to suffer pecuniary and non-pecuniary injuries, namely, the loss of income and benefits and the humiliation of being denied equal opportunity and being rejected for available advancement for which she qualified and consequent pain and suffering.

IV. CAUSES OF ACTION

27. Plaintiff incorporates paras. 1-26 as if restated herein.

28. By engaging in intentional gender-based discrimination against her, defendants, and each of them, violated the equal protection clause of the 14th Amendment to the United States Constitution, as made actionable against them by 42 U.S.C. sec. 1983.

V. PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that this Honorable Court:

- 1) accept jurisdiction of this matter;
- 2) empanel a jury to hear and decide all issues within its aegis;

3. award to plaintiff compensatory damages, including back pay with pre- and post-judgment interest, make whole relief for benefits, including pension contributions of which plaintiff has been denied by defendants' wrongful conduct;
4. award to plaintiff compensatory damages for the humiliation and pain and suffering defendants caused her by and through wrongful and illegal actions;
5. order defendant Dubois to promote plaintiff to the next available opening for the rank of sergeant or require defendant County to pay plaintiff front pay until defendants give her such promotion, again with pre and post-judgment interest;
6. award to plaintiff her reasonably incurred costs in litigating this matter and attorney fees pursuant to 42 U.S.C. section 1988 and
7. enter any other relief which the interests of justice and equity require.

Respectfully submitted,

MICHAEL H. SUSSMAN [3497]

Sussman & Watkins
PO BOX 1005
1 Railroad Avenue, Suite 3
Goshen, New York 10924
(845)-294-3991

Counsel for Plaintiff