

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Stephen Patterson,

Plaintiff,

COMPLAINT

-against-

Civil Action No.

City of Utica; Linda Fatata, individually and in her official capacity as Utica Corporation Counsel; Robert Palmieri, Individually and in his official capacity as Utica Weed and Seed Coordinator; Louis Capri, individually and in his official capacity as Utica Police Officer; Steven Haulk, individually and in his official capacity as Utica Police Officer; and Hiram Rios, individually and in his official capacity as Utica Police Officer,

Defendants.

Stephen Patterson, by and through his attorney, Leon R. Koziol, sets forth the following as and for a Complaint against the above-named defendants.

PARTIES

(1) At all times material to this Complaint, the plaintiff, Stephen Patterson, was, and still is a resident of Utica, New York.

(2) Defendant, City of Utica, hereinafter "City", is a municipal corporation duly constituted under the laws of the State of New York with a principal place of business located at One Kennedy Plaza, Utica, New York.

(3) At all times relevant to this Complaint, the defendant, Linda Fatata, was, and still is a chief policymaker for the City, occupying an official role as Corporation Counsel in charge of codes inspection, complaints and prosecutions.

(4) At all time relevant to this Complaint, the defendant, Robert Palmieri, was, and still is, a chief policymaker for the City, occupying an official role as Weed and Seed Coordinator in charge of codes inspections, complaints and prosecutions.

(5) The defendant, Louis Capri, is a police officer for the City, with a principal place of official business located at 413 Oriskany Street, Utica, New York.

(6) The defendant, Steven Haulk, is a police officer for the City, with a principal place of official business located at 413 Oriskany Street, Utica, New York.

(7) The defendant, Hiram Rios, is a police officer for the City, with a principal place of official business located at 413 Oriskany Street, Utica, New York.

JURISDICTION

(8) This action is brought, in part, pursuant to 42 U.S.C. Sections 1981, 1983, 1985 and 1986 together with the federal constitutional rights found in the First, Fourth, Fifth and Fourteenth Amendments.

(9) Jurisdiction is conferred upon this court pursuant to 28 U.S.C. Sections 1331 and 1367. Pendent jurisdiction exists over state law claims arising from common events which form the subject matter of this action.

FACTUAL BACKGROUND

(10) On or about September 26, 2006, the plaintiff formed a business partnership with one Leonard Isaacs for the purpose of facilitating a recreational and social gathering place for African-American residents. Necessary filings were immediately undertaken with the City for the purpose of securing a cabaret license and occupancy permit at a building located at 811 Broad Street, Utica, New York.

(11) Contemporaneous with these events, on or after September 26, 2006, the defendants commenced a process for impairing the plaintiff's business plans in retaliation for prior civil rights litigation and public criticisms undertaken against them by plaintiff.

(12) Since the year 2000, as a former wrongfully terminated Codes and Public Works Commissioner for the City, the plaintiff has successfully pursued or assisted with claims on behalf of himself, his father and other African-American victims of race discrimination against the City and certain of its policymakers.

(13) The retaliation against plaintiff's business activities commenced with a visit to the above location by defendant Palmieri and City codes and fire personnel acting at his direction. Their stated purpose was to close down the operation of any business being conducted by plaintiff. When a proper certificate of occupancy was provided, the said defendant became infuriated with a vow to shut the business down anyway.

(14) On or about October 2, 2006, the defendant City secured a temporary restraining order ("TRO") from a Utica city court judge which prevented plaintiff from occupying the subject location. The order was predicated upon two false affidavits

executed by defendants Capri and Haulk which depicted the plaintiff as a crime boss, drug dealer and suspicious person associated with gang activity and unlawful dealings with minors, alcohol and illegal weapons.

(15) The foregoing TRO was procured in violation of standard procedures for code prosecutions. Plaintiff's certificate of occupancy was summarily rescinded without proper inspections and notices of any codes infraction. Upon responding to the TRO in city court, it was determined that all codes issues had been satisfied, thereby rendering the TRO and rescission of occupancy permit as premature.

(16) During the above-described period, the plaintiff had been engaged in the defense of false criminal charges brought against him by defendants Capri, the City and others acting at their direction. These charges were dismissed by jury verdict on May 3, 2007 and by the Oneida County District Attorney on July 24, 2007.

(17) The combined events described in paragraphs 11-16 of this Complaint forced plaintiff to abandon his business plans at 811 Broad Street which was to be conducted under the name Afro-American Lodge Coffee Bar and Lounge.

(18) Among the events which compelled this decision and the investment losses suffered as a consequence, was an event on or about May 2, 2007 which featured defendants Fatata and Palmieri seeking to influence a criminal complaint against plaintiff from the building owner's agent. This influence was resisted and refused by this agent leaving plaintiff nonetheless at risk of facing false criminal charges in the future.

(19) On January 27, 2007, the plaintiff commenced another business operation at a property located at 689 Bleecker Street, Utica, New York. A one year lease was negotiated for the purpose of conducting a cabaret/night club. A two week application process for the necessary permits and licenses was frustrated and arbitrarily delayed by defendant city officials. Routine cooperation was denied.

(20) On or about April 11, 2007, defendant Palmieri and a city investigator employed by the defendant Fatata's office of the Corporation Counsel, entered plaintiff's leased premises without authorization. They compelled the building owner to grant access for the express purpose of investigating and collecting evidence of criminal activities against plaintiff.

(21) On April 12, 2007, the plaintiff, landlord, and his agent, were summoned to a meeting with defendant Palmieri and a subordinate attorney of defendant Fatata to examine the said lease secured upon the Bleecker Street premises. At its conclusion, the attorney discovered and announced a clause in the lease which would void the landlord-tenant arrangement in the event codes violations were cited by any relevant municipal entity.

(22) On the next day, plaintiff received notice of a codes inspection from the City. Simultaneous with these events, the building owner's agent related to plaintiff the incident described in paragraph 20 and asked him to vacate the premises. When that did not immediately occur, plaintiff was served with an eviction letter and locked out of the premises one week following the said incident.

(23) On May 3, 2007, during the aforesaid trial defense of criminal charges in Utica city court, the plaintiff was provided with a note from the bailiff to the effect that his cabaret license applicable to the Bleecker Street business had been denied because of his non-appearance at a hearing on the subject set for 11:00 a.m. the same day.

(24) The City's Acting Police Chief was the presiding officer of that earlier hearing that failed to include timely notice to plaintiff for purpose of securing an adjournment. The same presiding officer had testified against the plaintiff on the first day of the same criminal trial set for May 2, 2007.

(25) In April, 2008, plaintiff endeavored once again to operate another related cabaret business at the former Charlestown Mall located just outside City lines in the Town of Frankfort, New York. During a live performance on the grand opening of this business, defendant police officers arrived with a Frankfort Codes Official to shut down the event for alleged code violations.

(26) During an exchange between the said town official and plaintiff regarding the authority of city police to be simultaneously searching the premises, defendant Haulk threatened plaintiff with arrest. Although no illegal activity was discovered during the City raid, the defendants conducted regular harassment, blockades and inordinate visits over a nine month period of ensuing operation of plaintiff's business at this (third) location to impair its revenue generating capacities.

(27) On September 1, 2008, plaintiff entered into a lease with the owner of a property found at 315 Nichols Street in the City of Utica, New York. The first floor was

renovated into a social gathering place and the second floor was converted into a banquet hall having similar objectives for serving the recreation and entertainment needs of the local African-American community.

(28) On December 31, 2008, the plaintiff contacted the city's mayor and received permission the same day from the city's deputy chief to secure all night parking for a private New Year's Eve party featuring plaintiff's niece, "Miss New York". At approximately 2:15 a.m. on New Year's Day, the plaintiff's business was raided by defendant police officers. No tickets were issued for any illegal activity.

(29) On January 31, 2009, defendants Capri and Hiram Rios filed false charges against plaintiff for violation of various codes and city ordinance, including the operation of a business establishment without a cabaret license and unlawful consumption of alcohol related to the New Year's Eve event. There was no service of any of these charges upon plaintiff.

(30) On February 2, 2009, the city's codes chief mailed a notice to plaintiff's landlord at the Nichols Street property claiming the violation of various laws and codes on the part of the plaintiff. There was no truth or substance to the notice which possessed the same intimidation design as the earlier efforts upon plaintiff's other landlords.

(31) The codes notice was followed one week later by a "Public Nuisance Activity" letter from defendant Palmieri to the same Nichols Street landlord. This letter also contained a notice summoning the landlord to a meeting at the defendant (Corporation

Counsel) Fatata's office. Neither plaintiff nor the landlord was able to attend, and their agent, whose name was found upon the pertinent lease, was denied access to this meeting.

(32) As a consequence of these and other events, plaintiff was charged once again with various criminal and code violations. While appearing for one of these charges on April 14, 2009, properly noticed, in Utica city court, the plaintiff was approached by a city police officer with a warrant for his arrest stemming from an earlier non-appearance on related charges described in part at paragraph 29 of this Complaint. Plaintiff was promptly arrested and later bailed out for the amount of \$750.

(33) Plaintiff was arraigned on the warrant charge the following day. These events culminated in severe depression and mental distress to a point where plaintiff was compelled to seek immediate professional psychological treatment and a closure of the Nichols Street business. A subsequent review of the FOILED history report on this business showed a gross lack of tickets issued for any illegal activity pursuant to an inordinate scheme of surveillance by city police.

(34) Shortly thereafter, while plaintiff was cleaning out the Nichols Street premises, defendant Rios and other city officers arrived and demanded entry on the claim that a shooting had occurred inside. Plaintiff responded in the negative and with confusion. A search revealed nothing to corroborate any such report. An argument erupted between the two, resulting in a challenge by defendant Rios to engage in a fist fight with Plaintiff. The invitation was declined.

(35) During an ensuing period leading up to the filing of this Complaint, a video surveillance operation was accelerated upon the plaintiff. A harassment charge was dismissed against him by the Oneida County District Attorney. Various persons, including another tenant of the same Nichols Street property were solicited by city agents to promote the filing of additional false charges against the plaintiff.

FIRST CAUSE OF ACTION

(36) Plaintiff repeats and realleges the foregoing paragraphs as part of the claims which follow on a conspiracy theory of liability under 42 U.S.C. Sections 1983, 1985 and 1986.

(37) The named-defendants, acting individually and in concert with one another, have maliciously engaged in the solicitation, filing and prosecution of false charges against the plaintiff, without a finding or basis of probable cause, and in retaliation for plaintiff's prior nine year history of civil rights prosecutions and public criticisms against the defendant City and its officials.

(38) All of the above-described charges identified in connection with at least three businesses owned or operated by the plaintiff were dismissed without a finding of criminal or quasi-criminal liability by any judge or jury.

(39) As a direct consequence, plaintiff has sustained severe emotional distress, economic damage and costly legal defense in connection with the scheme of processes orchestrated against him. By reason of their malicious nature, the plaintiff is entitled to a punitive damage award against non-city defendants named in this Complaint.

**SECOND, THIRD, FOURTH AND
FIFTH CAUSES OF ACTION**

(40) Since the year 2000, the plaintiff has exercised certain rights secured to him by the First Amendment to the United States Constitution. These include, respectively, his rights of free speech, free association, free religion and petitions for a redress of grievances.

(41) On the first right, plaintiff states that he has regularly criticized the defendant City and its officials for their conduct of race discrimination in employment practices and law enforcement activity against African-American residents. The above-described prosecutions and maliciously orchestrated processes were designed to retaliate against plaintiff's free speech activities on these subjects at various public meetings and media interviews.

(42) On the second right, plaintiff states that the named-defendants have aggressively scrutinized plaintiff's personal and business interests due to their affiliation predominantly with African-American residents. Plaintiff's right to associate with a certain race or class of persons in a social club environment was seriously infringed as a consequence.

(43) On the third right, plaintiff states that he has been scrutinized for his efforts to sponsor and promote religious and charitable causes, including the establishment of church properties designed to house drug rehabilitation referrals. The presumption that such persons of African-American descent were engaged in ongoing illegal activity prevented the plaintiff from practicing his religion.

(44) On the fourth right, plaintiff states that defendants have engaged in a regular and ongoing scheme of retaliation for the filing of civil rights claims and lawsuits against the City of Utica. Upon becoming wrongfully terminated from the City as Codes and Public Works Commissioner, plaintiff's livelihood has been further impaired in private enterprise.

SIXTH CAUSE OF ACTION

(45) Plaintiff has been subjected to numerous instances of arrest, with and without a warrant, under false pretenses. Defendants have orchestrated grounds for official detainment, formal charges and incarceration solely as a mode of public harassment.

SEVENTH AND EIGHTH CAUSES OF ACTION

(46) The scheme of arrests and false prosecutions has violated plaintiff's rights under the Fourteenth Amendment to the United States Constitution, more particularly his right of equal protection and due process.

(47) On his seventh claim of this Complaint, plaintiff states that non African-American subjects of the defendants' official and unofficial activities are treated far more favorably. Plaintiff is being harassed substantially because he is of African-American descent.

(48) On the eighth claim, plaintiff states that he has been subjected to charges, prosecutions and warrants of arrest without notice and opportunity to be heard. Various defendants are described in this pleading to be engaged in official business and processes

which deprived the plaintiff of his property and liberty interest in a select, arbitrary and prejudicial fashion.

WHEREFORE, plaintiff Stephen Patterson, demands judgment against the defendants as follows:

- (1) An award of compensatory damages in the amount of Six Million Dollars (\$6,000,000);
- (2) An award of punitive damages in an amount to be determined by the Court against all non-city defendants named in this Complaint;
- (3) An award of attorney fees and litigation costs pursuant to 42 U.S.C. Section 1988; and
- (4) An award of such other and further relief as the Court may deem just and proper.

Dated: September 29, 2009

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