

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT – 2nd DIVISION
CIVIL ACTION NO. 01-CI-2882

MELINDA J. MASSARONE

PLAINTIFF

vs.

**COMPLAINT
JURY TRIAL DEMANDED**

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

DEFENDANT

Serve: Ed Gardner
LFUCG Department of Law
200 E. Main Street
Lexington, KY 40507

LARRY WALSH

DEFENDANT

Serve: Larry Walsh
LFUCG Division of Police
150 E. Main Street
Lexington, KY 40507

* * * * *

Plaintiff Melinda J. Massarone for her complaint against defendants Lexington-Fayette Urban County Government and Larry Walsh states as follows:

I

Nature of the Action

1. This is an action pursuant to KRS 344 seeking lost income and benefits, compensatory and punitive damages, costs, litigation expenses and attorney's fees arising from defendants' discriminatory employment practices based upon plaintiff's female gender and unlawful retaliation and discrimination based on plaintiff's resistance and opposition to unlawful employment practices by defendant.

II

Jurisdiction & Venue

2. This Court has jurisdiction over this case pursuant to KRS 23A.010 and KRS 344.450. Venue is proper herein because the claims arose in Fayette County, Kentucky.

III

Parties

3. Plaintiff Melinda J. Massarone is a female citizen of the United States of America. She presently resides in Fayette County, Kentucky.

4. Defendant Lexington-Fayette Urban County Government is an urban county government organized pursuant to the constitution and laws of the Commonwealth of Kentucky.

5. Defendant Larry Walsh is and has been at most of the times pertinent hereto employed as the Chief of the Division of Police of the Lexington-Fayette Urban County Government. Upon information and belief, Mr. Walsh resides in Fayette County, Kentucky.

IV

Facts Giving Rise to the Lawsuit

6. At all times pertinent hereto, Massarone was the “employee” of defendant LFUCG within the meaning of KRS 344.040.

7. At all times pertinent hereto, defendant LFUCG was the “employer” of plaintiff within the meaning of KRS 344.040.

8. At all times pertinent hereto, defendant Walsh was a “person” within the meaning of KRS 344.280.

9. At all times during her employment plaintiff maintained a satisfactory if not exemplary job performance as defendant's employee.

10. On or about February 1, 1990, defendant Walsh became the Chief of defendant's Division of Police.

11. At all times pertinent hereto and in all material and relevant respects, Walsh acted as the agent of defendant LFUCG.

12. As chief of LFUCG's Division of Police, Walsh was responsible for seeing that LFUCG's Division of Police adopted, implemented and instituted fair and non-discriminatory employment practices.

13. As chief of LFUCG's Division of Police, Walsh exercised *de facto* and final control of the employment practices of LFUCG's Division of Police.

14. As chief of LFUCG's Division of Police, Walsh knowingly condoned, tolerated and allowed employment practices by defendant's Division of Police that discriminated against female employees of the Division based on their female sex.

15. The discriminatory employment practices by defendant's Division of Police knowingly condoned, tolerated and allowed by Walsh were and are evidenced by, among other things and not limited to the following, Walsh's statements that women are subordinate to and inferior to men, actions subjecting female employees to disparate treatment compared with similarly situated male employees, willful and knowing toleration of discriminatory actions intended to make the job of female employees more difficult to perform because, according to Walsh, they were not "one of the boys," tolerating discriminatory actions that had the intended effect of deterring female employees from making complaints about discriminatory employment practices,

statements accusing employees who had reported discriminatory practices as having instigated a “coup,” statements that female employees should not or would not be promoted to deserved and earned higher positions because, according to Walsh, they were a “bitch” or “whore”, and other actions by Walsh evidencing a gender bias against female employees and toleration of discriminatory employment practices.

16. Defendant’s Division of Police developed and maintained under Walsh and due to Walsh’s actions and inactions a pattern and practice of discriminatory employment practices based on the female sex of employees and other persons seeking employment with the Division of Police.

17. Walsh subjected plaintiff to sexual harassment and discrimination during the course of her employment with defendant’s Division of Police.

18. As a result of her resistance and objections to the sexual harassment and discrimination to which she was subjected by Walsh, plaintiff was subjected, due to Walsh, to retaliation and other discriminatory actions during the course of her employment by the Division of Police.

19. In 1997 when plaintiff, due to outstanding job performance over the course of her career with the defendant’s Division of Police and meeting all relevant criteria, became eligible for promotion to the rank of Captain within defendant’s Division of Police, Walsh stated, in reference to plaintiff, gender specific derogatory terms and therefore based on those gender-biased reasons said he would not promote her to the rank of Captain.

20. Upon learning of Walsh’s gender biased statements and intended unlawful and discriminatory employment practices, plaintiff was forced to have Walsh informed

that she would pursue legal action only if Walsh did not promote her to the position and rank of Captain in accordance with established criteria and procedures.

21. Only following plaintiff's statements about her intent to pursue legal action if Walsh did not promote her to the position and rank of Captain in accordance with established criteria and procedures did Walsh relent and approve plaintiff's promotion in accordance with established criteria and procedures.

22. In and about late 1997 or early 1998 Walsh stated that he intended to render plaintiff's working conditions intolerable by assigning to the division's communications department.

23. In and about December 1997, plaintiff was assigned to the Communications Unit for LFUCG.

24. As intended by Walsh plaintiff's working conditions in the Communications Unit proved intolerable because of the wrongful actions of her supervisor, Sandy Devers, and she initially requested transfer from that position in July 1999.

25. In retaliation for plaintiff's objection and resistance to the sexual harassment that she was subjected to by Walsh, in retaliation for plaintiff's threats to pursue legal action should her promotion to the rank and position of Captain not be granted in accordance with established procedures and criteria, and in perpetuation of the gender biased employment practices that Walsh condoned, tolerated, allowed and perpetuated also, Walsh caused plaintiff's transfer request made in July 1999 to be denied.

26. Walsh similarly caused plaintiff's transfer requests to be denied that were made in Fall 1999 and early 2000.

27. Requests made by similarly situated male employees were promptly granted and approved by Walsh.

28. As a direct and proximate result of Walsh's denial of her transfer requests, plaintiff was rendered unable to continue her employment with the Division of Police and was forced to terminate her employment and take disability retirement.

29. A substantial and motivating factor but for which plaintiff would not have been forced to terminate her employment and take disability retirement with defendant's Division of Police was the discriminatory employment practices maintained by the Division based on plaintiff's female gender and resistance and objection to discriminatory employment practices, including sex discrimination and sexual harassment.

30. A substantial and motivating factor but for which plaintiff would not have been forced to terminate her employment and take disability retirement was retaliation and/or discrimination to which Walsh subjected her in retaliation for her opposition and objection to defendant's unlawful employment practices, including sex discrimination and sexual harassment.

31. As a direct and proximate result of the discrimination based on her female sex in the terms and conditions of her employment with defendant's Division of Police, plaintiff has suffered substantial emotional distress and mental anguish, embarrassment and humiliation and loss of income and benefits.

32. As a direct and proximate result of the discrimination and retaliation to which Walsh subjected her in retaliation for her opposition and objection to defendant's

unlawful employment practices, plaintiff has suffered substantial emotional distress and mental anguish, embarrassment and humiliation and lost income and benefits.

33. The discriminatory employment practices directed at plaintiff by defendant's Division of Police have been in callous disregard of her rights to discrimination free employment.

34. The retaliation and discrimination to which plaintiff has been subjected by Walsh based on her opposition to and objection to unlawful employment practices has been in callous disregard of her rights secured by the Kentucky Civil Rights Act.

V

Causes of Action

Count 1 – Sex Discrimination In Employment

35. Plaintiff incorporates herein as if fully set forth paragraphs 1 through 34 hereof.

36. Defendant LFUCG has subjected plaintiff to discrimination based on her female sex in the terms and conditions of her employment with its Division of Police and thereby caused plaintiff substantial injuries.

Count 2 – Retaliation and Discrimination

37. Plaintiff incorporates herein as if fully set forth paragraphs 1 through 36 hereof.

38. Defendant Walsh has subjected plaintiff in violation of KRS 344.280 to discrimination and/or retaliation based on her objections and opposition to unlawful employment practices by defendant.

VI

Demand for Relief

WHEREFORE, plaintiff Melinda J. Massarone demands judgment as follows:

(1) entry of a judgment awarding her monetary damages against defendants in such amount in excess of this Court's jurisdictional minimum as a jury determines at trial to fairly compensate her for the injuries and damages caused her by defendants' discriminatory employment practices and unlawful discrimination and retaliation including her emotional distress and mental anguish, embarrassment and humiliation and loss of income and benefits;

(2) entry of a judgment assessing punitive damages against defendants in such amount as found necessary by a jury to punish defendants appropriately for their callous disregard for plaintiff's right to discrimination free employment and right to oppose and object to unlawful and discriminatory employment practices as secured by the Kentucky Civil Rights Act;

(3) entry of a judgment awarding plaintiff her costs, litigation expenses and attorney's fees in accordance with CR 54 and KRS 344.450; and,

(4) all other relief to which she is entitled.

Demand for a Jury Trial

Pursuant to CR 38 plaintiff demands trial by jury on all issues herein so triable.

ROBERT L. ABELL
271 W. Short Street, Suite 500
P.O. Box 983
Lexington, KY 40588-0983
859.254.7076
ATTORNEY FOR PLAINTIFF

Verification

I have read the foregoing Complaint and the facts stated therein are true and accurate to the best of my knowledge and belief.

Melinda J. Massarone

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

Subscribed and sworn to before me by Melinda J. Massarone this the _____ day of _____, 2001.

My Commission expires: _____

Notary Public