

IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY

PATRICK McNALLY,

Case Number:

Plaintiff,

vs.

CITY OF NORTH MIAMI, a Florida
municipal corporation,

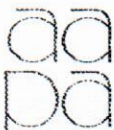
**Complaint — Jury Trial
Demanded**

Defendants.

Plaintiff, Patrick McNally, sues defendant, City of North Miami, a
Florida municipal corporation, and shows:

Introduction

1. This is an action brought pursuant to the Florida Civil Rights Act of 1992 ("FCRA") by a white, U.S.-born police sergeant who was passed over for a promotion to commander, for which he was qualified, in favor of three (Haitian, Hispanic and African-American) sergeants. The decision-maker was a Haitian-born acting police chief who, **One**, had stated in a YouTube interview prior to the promotions that he wanted his police department to "mirror my community," which is Haitian, African-American and Hispanic, and, **Two**, stated in a meeting with his command staff that the promotions "were not based on performance." He sues under the FCRA and Article I, § 2 of the Florida Constitution.



Jurisdiction, Venue and Parties

2. This action seeks relief seeks damages in excess of \$15,000, exclusive of costs and interest, as well as injunctive relief.

3. Venue is proper in Miami-Dade County, Florida because the events of which plaintiff complains took place here and because the defendant, City of North Miami, is situated within Miami-Dade County.

4. Patrick McNally was at all times material prior to passed-over for promotion a 47-year-old white police sergeant with 20-year-plus member of the police department who had been an "outstanding"-rated sergeant since 2012 and who is protected by both the race-discrimination provisions of the FCRA, and Article I, § 2 of the Florida Constitution, which makes freedom from governmental race discrimination a fundamental right.

5. Defendant City of North Miami ("North Miami") is a Florida municipal corporation. North Miami at all material times employed more than 15 persons in each of twenty or more calendar weeks in the current or previous calendar year and was and is an "employer" as defined by § 760.02(7), FLA. STAT.

Satisfaction of Conditions Precedent

6. Mr. McNally filed a charge of discrimination with the Florida Commission on Human Relations ("FCHR") on or about August 23, 2016.

7. More than 180 days have elapsed after the filing of the charges of discrimination without the FCHR's either conciliating the matter or

making a finding adverse to him, thereby entitling him to maintain this action.

8. All other conditions precedent to the bringing of this action have been performed or waived.

General Allegations

9. Gary Eugene, who is of Haitian descent, became Acting Chief of Police in North Miami May 24, 2016 and:

a. within a day was giving a YouTube videotaped interview in which he stated that he wanted his police department to "mirror the community," and

b. 10 days after being officially appointed, but prior to being sworn in July 12 as Chief of Police, engaged June 26 in a cluster of race-based promotional decisions, e.g.,

i. promoting Commander Tim Belcher to major over Commander Angel Rivera, whom he had told members of the command staff (including Commander Rivera) was his "highest performing commander," because (he two commanders) "I needed an African-American," and

ii. promoting Sergeants Emile Hollant, a Haitian; Rafael Estrugo, a Hispanic, and Angelo Brinson, an African-American, over Mr. McNally,

all four of which promotions then-Acting Chief Eugene told his command staff "were not based on performance."

10. McNally, who from March 10 through April 9, 2016, had served as acting commander of Traffic Safety, was qualified for promotion to commander, for which he would have applied if there had been any announcement or the position or opportunity to apply.

11. Former-Chief Eugene at all times material acted toward Mr. McNally based on the authority vested in him as Chief of Police of North Miami, which behavior the city's management and policy makers acquiesced in and ratified.

12. In June 2017, however, City Manager Larry Spring met with 11 members of the Police Department Command Staff, at which time he stated that then-Chief Eugene had admitted to him that he had "made promotions not based on merit."

13. In a July 17, 2017 termination letter, Mr. Spring informed then-Chief Eugene that he was being fired based on, inter alia, "[i]ncompetence and insubordination as evidenced by your own admission to me that you made promotions based not on merit but on what you perceived as a means to curry political favor with outside influences."

14. Section 760.10(1), FLA. STAT., provides in pertinent part:

It is an unlawful employment practice for an employer:

(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, ... sex, ... national origin [or] age....

(b) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, ... sex, ... national origin [or] age....

15. Freedom from racial discrimination is additionally a fundamental right under Art. I, § 2 of the Florida Constitution.

16. Mr. McNally's race (white) was a substantial, motivating cause of former Chief Eugene's passing over McNally for promotion to commander of police in favor of Messrs. Hollant, Estrugo and Brinson.

17. The conduct of the City of North Miami and its agents, proximately, directly, and foreseeably caused McNally damages, including but not limited to lost wages and benefits, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

18. Plaintiff has no plain, adequate, or complete remedy at law for the actions of defendant, which have caused, and continue to cause, irreparable harm.

19. Plaintiff is entitled to recover any attorneys fees and litigation expenses he incurs under § 760.11(5), FLA. STAT.

Prayer for Relief

WHEREFORE, Plaintiff, Patrick McNally, prays that this court will grant judgment:

a. permanently enjoining defendant, City of North Miami, its officers, agents, servants, employees and all other persons in active concert or participation with it from violating the provisions § 760.10(1), FLA. STAT. and Art. 1, § 2, FLA. CONST., as to him;

b. awarding judgment against City of North Miami for the back pay and benefits to which Mr. McNally would have been entitled but for the City of North Miami's discriminatory act of passing him over for promotion to commander;

c. awarding judgment against the City of North Miami for compensatory damages;

d. enjoining defendant City of North Miami to promote Mr. McNally to the position of commander for which he was passed over in favor of Messrs. Hollant, Estrugo and Brinson, nunc pro tunc to one-minute before the earliest of those promotions were official;

e. awarding Mr. McNally his costs, including a reasonable attorney's fee, pursuant to § 760.11(5), FLA. STAT., and

f. granting such other and further relief as is just.

Demand for Jury Trial

Plaintiff, Patrick McNally, demands trial by jury on all issues so triable.

Respectfully Submitted,

/s/ William R. Amlong

WILLIAM R. AMLONG

Florida Bar No. 470228

WRAMlong@TheAmlongFirm.com

KAREN COOLMAN AMLONG

Florida Bar No. 275565

KAmlong@TheAmlongFirm.com

JENNIFER DALEY

Florida Bar No. 0856436

JDaley@TheAmlongFirm.com

AMLONG & AMLONG, P.A.

Attorneys for Plaintiff

500 Northeast Fourth Street

Second Floor

Fort Lauderdale, FL 33301-1154

Telephone: (954)462-1983

***Attorneys for the Plaintiff,
Patrick McNally***

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