



MEMORANDUM

Office of the City Attorney

000751

Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commissioners

DATE: December 11, 2000

FROM: City Attorney

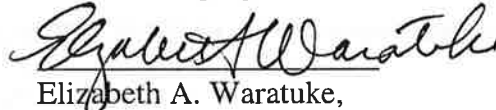
CONSENT

SUBJECT: Thomas Hannah v. City of Gainesville;
Case No.: 1:00CV183MMP


Recommendation: The City Commission authorize the City Attorney, and/or special counsel if insurance coverage is available, to represent the City in the case styled Thomas Hannah v. City of Gainesville.

In late February 2000, Thomas Hannah, an employee of the City, filed a charge with the EEOC alleging that he was denied a position because of a disability. The EEOC found "no cause" to believe that discrimination occurred. On November 27, 2000 the Mayor was served with a complaint by Mr. Hannah alleging disability discrimination.

Prepared by:


Elizabeth A. Waratuke,
Litigation Attorney

Approved and
submitted by:


Marion J. Radson,
City Attorney

United States District Court

NORTHERN

DISTRICT OF

FLORIDA

THOMAS HANNAH, Plaintiff,

v.

CITY OF GAINESVILLE,

Defendant.

SUMMONS IN A CIVIL CASE

CASE NUMBER:

A TRUE COPY

STEPHEN M. GELRICH, SHERIFF
ALACHUA COUNTY, FLORIDA

Served at 377 on the 27 day

of NOV 20 2000

By P. Starnes

As Deputy Sheriff

TO: (Name and address of defendant)

MAYOR PAULA DELANEY
CITY OF GAINESVILLE
200 EAST UNIVERSITY AVENUE
GAINESVILLE, FLORIDA 32601-

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

RICHARD L. RUTH, ESQ.
THE RUTH LAW FIRM
POST OFFICE BOX 440550
JACKSONVILLE, FLORIDA 32222



an answer to the complaint which is herewith served upon you, within TWENTY (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Robert A. Mossing
CLERK

10/23/00
DATE

Deb. Boone
(BY) DEPUTY CLERK

IN THE
UNITED STATES DISTRICT COURT
IN AND FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

THOMAS HANNAH,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF GAINESVILLE,)
)
 Defendant.)
 _____)

Case No. 1:00cv183 MMP

COMPLAINT FOR RELIEF AND DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, THOMAS HANNAH (hereinafter "Plaintiff" or "Mr. Hannah"), by and through his undersigned attorney, and hereby commences this action against Defendant CITY OF GAINESVILLE (hereinafter "Defendant" or "the City"), and states the following:

STATEMENT OF NATURE OF ACTION, JURISDICTION, AND VENUE

1. This is an action under Title I of the Americans With Disabilities Act of 1990, Title I of the Civil Rights Act of 1991, and the Florida Civil Rights Act of 1992, to correct and remedy unlawful employment practices on the basis of an actual, and perhaps perceived, disability and to make whole and compensate Mr. Hannah for the damages he has suffered as a result of those unlawful employment practices. The Defendant unlawfully deprived Mr. Hannah of more favorable terms and conditions of employment with the City's municipal utility, Gainesville Regional Utilities, by refusing to allow him to remain employed with that division of the City, because of his actual disability (loss of an arm), and perhaps because of a perceived disability.

OFFICE OF CLERK
U.S. DISTRICT CT.
NORTHERN DISTRICT OF
GAINESVILLE, FLA.

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RECEIVED

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sections 1331, 1343, and 1367. This action is authorized and instituted pursuant to Section 107(a) of the Americans With Disabilities Act of 1990 ("ADA"), 42 U.S.C. Section 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. Sections 2000e-5(f)(1) and (3), pursuant to ~~Section 102 of the Civil Rights Act of 1991, 42 U.S.C. Section 1981a, and pursuant to~~ Sections 760.10 and 760.11, Florida Statutes.

3. As the unlawful employment practices alleged herein occurred in Gainesville, Alachua County, Florida, venue over this action appropriately lies with this Court.

IDENTIFICATION OF PARTIES TO THIS ACTION

4. Plaintiff Thomas Hannah is an individual residing with the Northern District of Florida, and at all times material to the allegations in this Complaint, was an employee of Defendant.

5. Defendant is a municipal corporation operating under a Commission-Manager form of government. Many of Defendant's unlawful employment practices involve its municipal utility, Gainesville Regional Utilities, which utility is solely owned by the City of Gainesville.

6. At all times material to the allegations in this Complaint, Defendant has employed the requisite number of employees, and has otherwise met the jurisdictional prerequisites for coverage under Title VII of the Civil Rights Act of 1964 as adopted by the Americans With Disabilities Act.

7. At all relevant times, Defendant has been a covered employer under the Americans With Disabilities Act and the Florida Civil Rights Act. At all relevant times, Mr. Hannah has been a covered individual entitled to the protections of the Americans With Disabilities Act and the Florida Civil Rights Act, as those laws relate to his employment, and pursuit of more favorable employment opportunities, with Defendant.

~~Specifically, Mr. Hannah was a qualified individual with a disability that substantially~~
restricted one or more major life activities, as Mr. Hannah suffers from the loss of one (1) of his arms.

PLAINTIFF'S COMPLIANCE WITH ADMINISTRATIVE PREREQUISITES

8. Plaintiff has timely complied with all legally required administrative prerequisites prior to initiating this action.

9. Specifically, Plaintiff filed his charge of disability discrimination with the Equal Employment Opportunity Commission ("EEOC") in January, 2000, which charge was prepared by the Commission in response to an earlier Affidavit submitted by Mr. Hannah to the EEOC on or about December 22, 1999. Mr. Hannah's charge was assigned Number 150 A0 1624 for processing.

10. To the best of Mr. Hannah's knowledge and belief, his charge of disability discrimination was also "dual-filed" with the Florida Commission on Human Relations ("FCHR"), and assigned FCHR Charge Number 2003502.

11. On or about July 25, 2000, the EEOC mailed a Notice of Right to Sue to Mr. Hannah, which he received and signed for on or about August 7, 2000.

12. Mr. Hannah has timely filed this action with this Court within ninety (90) days of his receipt of the above-referenced Notice.

13. More than 180 days have passed since Plaintiff's charge of discrimination was filed with the FCHR, and the agency has not issued any "no cause" determination during that period of time. Thus, Mr. Hannah is entitled to commence a civil action under the Florida Civil Rights Act.

BASIS OF CLAIM

14. To the best of Mr. Hannah's knowledge and belief, in or about November, 1998, he applied for an Operator Trainee position in the Water/Wastewater Service department of Defendant's municipal utility, Gainesville Regional Utilities (hereinafter "GRU"). Until that point, Mr. Hannah had been employed as a Maintenance Worker with Defendant's Streets Division. Mr. Hannah was qualified for the position applied for at GRU.

15. Employment with GRU was highly sought after by all qualified City employees. More overtime pay was available for operators, and more promotional opportunities were available at GRU, on a faster pace, than were available to general City employees. Thus, employment in GRU, as opposed to employment in the general City government, would have offered Mr. Hannah better terms, conditions and promotional opportunities in his employment with Defendant.

16. In or about April, 1999, GRU contacted Mr. Hannah and asked him if he was still interested in the position he had applied for. Mr. Hannah stated that he was still interested, and promptly completed the requisite transfer paperwork.

17. Approximately two (2) weeks later, Mr. Hannah began working in his new position at GRU. Mr. Hannah was assigned to a work crew, and was asked to perform

various tasks. Mr. Hannah was able to complete all of the tasks expected of him, without any problems whatsoever.

18. About three (3) days later, Mr. Hannah was suddenly requested to “change” crews, and was assigned to a different work crew. To the best of Mr. Hannah’s knowledge and belief, this transfer was effectuated so that he would be required to work for a crew supervisor that would be able to pretextually discriminate against him as to “performance issues”, since no other crew members were reassigned.

19. Nevertheless, Mr. Hannah once again was able to capably perform all of the job responsibilities that were expected of him, while working on this new crew.

20. Thereafter, Mr. Hannah was required to take a “confined space test”. The day before the test, on or about May 19, 1999, Mr. Hannah was told by Mr. Doug Prentice, the Safety Coordinator for GRU, that he was concerned that Mr. Hannah would be able to pass the confined space test.

21. The next day, at a time before Mr. Hannah engaged in the confined space test, another manager at GRU, Mr. Don Worth, informed Mr. Hannah that he needed to reconsider his former position in the Streets Division, as Plaintiff was likely going to be sent back over to streets. At that time, Mr. Hannah was informed that Mr. Worth “had been getting heat” ever since Mr. Hannah had come to GRU, due to the fact that Mr. Hannah only had one arm. Mr. Hannah inquired as to the source of the “heat”, to which question Mr. Hannah was told that the source of pressure was coming all of the way up from Defendant’s personnel department and the City Commissioners. Mr. Hannah was also told that Mr. Hannah was going to be terminated, and that a memorandum had been written over a week earlier to that effect.

22. Shortly thereafter, Mr. Hannah performed the confined spaces test. Mr. Hannah engaged in the process with no incidents whatsoever. At the end of the test, Mr. Prentice expressly stated that to Mr. Hannah that he had "passed" the test, and that he did as good as everyone else.

23. During the following week, Mr. Hannah was told by Mr. Prentice that he would not be certified in confined spaces, because Mr. Prentice would feel bad if he certified Mr. Hannah, and then Plaintiff got "hurt" or "killed". However, there would have been no safety issues present that would not have applied to anyone else performing confined spaces work.

24. Promptly thereafter, Defendant returned Mr. Hannah to his former position in the Streets Division.

25. Later, Defendant produced certain evaluation sheets allegedly demonstrating Mr. Hannah's poor performance while at GRU. However, the sheets were never shown to Mr. Hannah at the time they allegedly were being completed. Rather, they were not produced until months after Mr. Hannah's transfer back to the Streets Division.

26. Furthermore, the sheets were clearly fabricated in all or in part, and a pretext for discrimination. For example, certain of the equipment listed on the sheets as part of the alleged performance review were never on any job at any time. Other portions of the evaluation sheets had Mr. Hannah being rated for tasks that he would not have yet been legally able to do (for example, performing confined spaces work, since Mr. Hannah had not yet been certified).

27. Mr. Hannah was also treated differently from other GRU employees and new hires, in other aspects of employment. For example, new hires at GRU are usually provided an orientation session during their first week, yet Mr. Hannah was never able to attend an orientation session. Furthermore, the usual "probationary" period for new GRU employees is six (6) months, and indeed, certain employees in Mr. Hannah's work crew had been at GRU for months before him without yet being given the tests that Mr. Hannah was required to endure. Thus, Mr. Hannah was tested on a much more accelerated pace than other new hires at GRU.

28. The discriminatory intent of Defendant is further evidenced by derogatory and discriminatory comments made by supervisors and managers attendant with Mr. Hannah's employment in the Streets Division, both in the months preceding his transfer to GRU, and in the time period afterwards.

29. Last, but not least, Defendant's discrimination against Mr. Hannah on the basis of disability, is evidenced by the fact that while in the Streets Division, he was certified in confined spaces without any problems whatsoever, that he has used in his current position much of the same equipment that was required to be used at GRU without incident, and that he was able to obtain his Commercial Drivers' License without incident. If indeed Mr. Hannah presented the enormous safety risk, and performance liability, that management at GRU claimed, he would not have been able to accomplish the above-cited items as he did.

30. Rather, Mr. Hannah's treatment by Defendant while at GRU was solely a product of discriminatory intent on the basis of his actual disability, or perhaps, a perceived disability. He was fully qualified for the position he sought and maintained at

GRU, and was able to perform all of the tasks that were required of him, without any performance issues whatsoever.

COUNT I – DISABILITY DISCRIMINATION IN VIOLATION
OF THE AMERICANS WITH DISABILITIES ACT

31. In support of Count I of this Complaint, Plaintiff incorporates by reference paragraphs 1 through 30 as recited above.

32. Defendant's treatment of Plaintiff, and denial of employment at GRU, was unlawfully based upon his actual disability, and perhaps, a perception of a disability.

33. Mr. Hannah was qualified for the position he sought and held at GRU, yet was treated adversely, and ultimately transferred out of that position, because of his actual disability, and perhaps a perception of disability.

34. Defendant's discriminatory conduct towards Mr. Hannah was in violation of the Americans With Disabilities Act.

35. As a result of Defendant's discriminatory conduct, Mr. Hannah has suffered economic loss and mental anguish and suffering.

36. As a result of Defendant's conduct, Mr. Hannah has also been required to retain the undersigned attorney to represent him in this action, and is obligated to pay him a reasonable fee for his services.

WHEREFORE, Plaintiff, THOMAS HANNAH, respectfully requests an award of all appropriate damages and relief, including, but not necessarily limited to:

- a. Compensation for all economic and compensatory damages allowed by law;
- b. Compensation for any other damages allowed by law;
- c. An award of reasonable attorney's fees and costs;
- d. Interest; and,

e. Such other additional legal, equitable, and injunctive relief as may be just and proper.

COUNT II – DISABILITY DISCRIMINATION IN VIOLATION
OF THE FLORIDA CIVIL RIGHTS ACT

37. In support of Count II of this Complaint, Plaintiff incorporates by reference paragraphs 1 through 30 as recited above.

38. Defendant's treatment of Plaintiff, and denial of employment at GRU, was unlawfully based upon his actual disability, and perhaps, a perception of a disability.

39. Mr. Hannah was qualified for the position he sought and held at GRU, yet was treated adversely, and ultimately transferred out of that position, because of his actual disability, and perhaps a perception of disability.

40. Defendant's discriminatory conduct towards Mr. Hannah was in violation of the Florida Civil Rights Act.

41. As a result of Defendant's discriminatory conduct, Mr. Hannah has suffered economic loss and mental anguish and suffering.

42. As a result of Defendant's conduct, Mr. Hannah has also been required to retain the undersigned attorney to represent him in this action, and is obligated to pay him a reasonable fee for his services.

WHEREFORE, Plaintiff, THOMAS HANNAH, respectfully requests an award of all appropriate damages and relief, including, but not necessarily limited to:


- a. Compensation for all economic and compensatory damages allowed by law;
- b. Compensation for any other damages allowed by law;
- c. An award of reasonable attorney's fees and costs;
- d. Interest; and,

e. Such other additional legal, equitable, and injunctive relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues raised herein that are so triable.

DATED this 23rd day of October, 2000.

By: 
Richard L. Ruth, Esq.

Florida Bar No. 0046681
THE RUTH LAW FIRM
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Jacksonville, Florida 32222
Phone: (904) 278-9881
Fax: (904) 291-1700

Counsel for Plaintiff
Thomas Hannah