

Crystal McDowell

DC-16-11790

NO. _____

JESUS MARTINEZ
Plaintiff,

V.

THE CITY OF DALLAS, TEXAS
AND DAVID O'NEIL BROWN
Defendants.

§ **IN THE DISTRICT COURT**
§
§
§ _____ **JUDICIAL DISTRICT**
§
§
§ **DALLAS COUNTY, TEXAS**

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW JESUS MARTINEZ, complaining of and about THE CITY OF DALLAS, TEXAS, more particularly, the CITY OF DALLAS POLICE DEPARTMENT and CHIEF DAVID O'NEIL BROWN, individually, hereinafter collectively called Defendants, and for cause of action shows unto the Court the following:

DISCOVERY CONTROL PLAN LEVEL

- 1. Plaintiff intends that discovery be conducted under Discovery Level 2.

PARTIES AND SERVICE

2. Plaintiff, JESUS MARTINEZ (hereinafter referred to as "Officer Martinez"), is an Individual whose business address is 1400 South Lamar Street, Dallas, Texas 75215.

3. The last three numbers of JESUS MARTINEZ's driver's license number are withheld. The last three numbers of JESUS MARTINEZ's social security number are withheld.

4. Defendant, THE CITY OF DALLAS, is a municipality located in Dallas County, Texas. THE CITY OF DALLAS operates the DALLAS POLICE DEPARTMENT (hereinafter referred to as "DPD"). THE CITY OF DALLAS funds and operates DPD, which, along with the City Manager's office, Chief DAVID O'NEIL BROWN (hereinafter referred to as "Brown") and

Mayor MIKE RAWLINGS are responsible for the implementation of the police department's budget, policies, procedures, practices, and customs, as well as the acts challenged by this suit. THE CITY OF DALLAS may be served with process by serving it by and through its agent for service of process, Chris Bowers, Interim City Attorney, Dallas City Hall, 1500 Marilla Street, Dallas, Texas 75201, or wherever he may be found. Additional service is being made on Mayor MIKE RAWLINGS, 1500 Marilla Street, Dallas City Hall, Dallas, Texas 75201, or wherever he may be found.

5. Defendant DAVID O'NEIL BROWN, upon information and belief, is an Individual who is a resident of Texas, and at all times material herein was the Chief of Police acting in the course and scope of his employment for THE CITY OF DALLAS AND DPD. Defendant may be served with process at his office at 1400 S. Lamar St., Dallas Police Department, Dallas, Texas 75215 or wherever he may be found.

JURISDICTION AND VENUE

6. The subject matter in controversy is within the jurisdictional limits of this court.

7. Plaintiff seeks:

a. monetary relief more than \$200,000.00 but not more than \$1,000,000.00.

8. This court has jurisdiction over the parties because Defendants are Texas residents.

9. Venue in Dallas County is proper in this cause under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

FACTS

10. On June 8, 2014, while on patrol in the "Deep Ellum" area of Dallas, Texas,

Officer Martinez got into an altercation with an individual named Joe Wesson (hereinafter referred to as “Wesson”).

11. At that time, Officer Martinez witnessed Wesson Soliciting by Coercion – a direct violation of the Dallas City Code, Chapter 31, Sec. 31–35. Wesson has an extensive history of solicitation.

12. Officer Martinez attempted to calmly convince Wesson to leave the area without arrest or issuing a ticket.

13. After driving around the block, Officer Martinez noticed Wesson still present in the area Soliciting by Coercion and still in violation of Dallas City Code, Chapter 31, Sec. 31-35. Officer Martinez parked in a nearby parking lot where Wesson approached Officer Martinez’s patrol car. After Wesson displayed erratic behavior, Officer Martinez exited the vehicle and observed Wesson continuing conduct in violation of Dallas City Code, Chapter 31, Sec. 31-35. Wesson’s continuous refusal to comply with lawful commands to leave the area without arrest or ticket issuance led to Officer Martinez’s final decision to arrest Wesson.

14. As trained by the Dallas Police Basic-Training Academy, Officer Martinez asked Wesson to show his hands for officer safety, to which Wesson adamantly refused, and instead kept his hands behind his back. Officer Martinez became nervous that Wesson may have a weapon and asked again for Wesson to show his hands. Wesson continued to disregard Officer Martinez’s lawful commands until Wesson brought his hand from behind his back in an attempt to assault Officer Martinez. A struggle between Officer Martinez and Wesson ensued.

15. In compliance with the DPD use of force guidelines, Officer Martinez deployed Oleoresin Capsicum Spray (hereinafter referred to as “mace”).

16. Fighting the increasing and severe pain and temporary blindness from the mace

blowback, Officer Martinez managed to get the uncooperative Wesson to the ground, where Officer Martinez struggled to handcuff Wesson, who actively resisted the attempt to arrest for city code violations and detain Wesson for officer safety. Officer Martinez was still uncertain as to if Wesson had a weapon at this point.

17. Due to Officer Martinez's temporary blindness caused by the deployment and blow back of mace, Officer Martinez could not see Wesson's conduct, he could only feel and hear Wesson actively resisting. This conduct made Officer Martinez extremely apprehensive and placed Officer Martinez in fear for his life in a potentially dangerous situation.

18. This incident resulted in the DPD opening an excessive force investigation, lead by the Internal Affairs Division of DPD (hereinafter referred to as "Internal Affairs") and the Public Integrity Unit of the Dallas County District Attorney's Office (hereinafter referred to as "Integrity Unit").

19. During the investigation, neither the Integrity Unit nor Internal Affairs attempted to locate other known potential witnesses to the incident leading to arrest, nor did they attempt to reconcile conflicting witness statements before moving forward with disciplinary action.

20. There are potential witnesses that the Public Integrity Unit has no record of interviewing during its investigation. There is also no explanation of why these potential witnesses are not included in the report. Moreover, Deep Ellum is designated by city ordinance as a "high tourist/high pedestrian area(s)." *Dallas City Code, Chapter 31, Sec. 31-35*. Although the City of Dallas designates this area as such and the incident giving rise to Wesson's arrest was in the middle of the day in a high traffic area, no records exist with the Public Integrity Unit or Internal Affairs citing an attempt to interview potential witnesses other than other officers and first responders who did not witness the entirety of the incident.

21. The witnesses interviewed had conflicting testimony of the events leading up to Wesson's arrest and multiple witnesses did not observe the incident leading to Wesson's arrest.

22. DPD maintains experts and trainers on the subject of use of force of police officers, however, investigating detectives never attempted to talk to any of the personnel regarding the reasonability of the force Officer Martinez used against Wesson.

23. Wesson's interview with the Public Integrity Unit revealed many discrepancies between the recorded video of the altercation and Wesson's testimony.

24. Despite witnesses' claims that they had seen portions of the events surrounding the scene, none of the stories were fully consistent with other witness testimony or the video recording(s).

25. Meanwhile, the incidents and riots in Ferguson, Missouri were making headlines. Oddly parallel to the events and concerns in Ferguson, on November 24, 2014, Officer Martinez was fired for excessive force; the very same day a grand jury no-billed Officer Wilson in the Ferguson incident.

26. After Officer Martinez was fired, DPD received e-mails from witnesses that were attending a memorial for a local man who claimed to witness the event and defended Officer Martinez. There are no records of the Police Department's investigators, the Public Integrity Unit or Internal Affairs evidencing any follow up with these potential witnesses.

27. Directly after Officer Martinez's termination from DPD, he was arrested and detained in jail for at least half a day, a placement that can be exceptionally dangerous for a police officer.

28. Officer Martinez then timely appealed the termination to the city manager. Four days before the city manager was scheduled to review Officer Martinez's termination, the Chief

of Police, DAVID O'NEIL BROWN, called a special city council meeting. At that meeting, Brown showed the city council an edited and incomplete version of the video, which failed to show the full context of the incident.

29. Despite the testimony of medical personnel and other witnesses stating both Officer Martinez and Wesson were treated for mace exposure, Brown inaccurately told the city council that mace was not used.

30. Contrary to evidence in the form of pictures and officer/witness testimony authenticating that Wesson possessed a knife during his altercation with Officer Martinez, Brown, again inaccurately, informed the city council that Wesson did not possess a knife during the altercation.

31. The city manager, after hearing the false information provided by Brown at the city council meeting, denied Officer Martinez's appeal and Officer Martinez appealed that decision to the Civils Appeal Board.

32. Ad interim, for one year, Officer Martinez did not have employment with DPD like he maintained for several years prior. In order to supplement his lost income, Officer Martinez worked three part-time jobs, but could not make near the income from his position as an officer of the DPD, as well as other part-time positions regularly worked by DPD officers to supplement their primary income. After more than a year, the Civil Appeal Board finally reinstated Officer Martinez's employment in September 2015.

33. Over the course of the year he was unemployed, Officer Martinez made a mere \$19,787.53 in income, substantially less than his income as an officer with DPD. Because of an inadequate investigation, a largely skewed and incorrect story given to City Council by Brown and the political environment regarding misconduct of officers around the country, Officer

Martinez lost over \$100,000.00 in income and, although the City of Dallas repaid what they felt was just and equitable, Officer Martinez lost significant income from the secondary employment positions which are standard for Dallas Police Officers. Additionally, Officer Martinez was forced to significantly deplete his pension (in excess of \$30,000.00) to make up for the loss of income during the year after DPD wrongfully terminated his employment.

34. Because of the political atmosphere surrounding the Ferguson, Missouri incident, this particular, and dissimilar ordeal in Deep Ellum has painted Officer Martinez as a racist police officer, which has caused irreparable harm to Officer Martinez's reputation. Moreover, Officer Martinez now faces uncertainty and job insecurity within the police department, for fear that reaching out to the wrong person might result in further job loss and cost him his career.

35. Officer Martinez still has an arrest for excessive force on his record even after he was cleared and no-billed for this incident. These blemishes on his record prevent Officer Martinez from seeking work at other police departments.

JESUS MARTINEZ'S CLAIM FOR VIOLATION OF DUE PROCESS

36. Plaintiff incorporates by reference paragraphs 1 through 35 as if fully set forth herein.

37. Dallas City Code, Chapter 34 Sec. 34-37(d)(2)(b) provides that an employee "must be given an opportunity to respond to the allegations" in appeal proceedings. Brown held a city council meeting without notice to Officer Martinez. Because the city manager attended the city council meeting and Officer Martinez was not allowed the opportunity to respond to allegations presented and controvert Brown's incomplete, inaccurate and skewed testimony, Officer Martinez's due process was violated and he was terminated as a result.

38. An officer can recover damages from loss of employment if the officer was

denied due process and there was no just cause for the termination. If the detectives had fully investigated the incident, they would have found Officer Martinez had acted reasonably in the circumstances and thus conclude there was no reason to terminate Officer Martinez's employment. Additionally, the lack of conclusive evidence and the existence of highly conflicted evidence and testimony did not provide a just cause for termination.

39. Officer Martinez had a property interest in his employment as a police officer before and after the incident. Officer Martinez also has a liberty interest in his now tarnished reputation.

40. Since there was no just cause for termination, the City of Dallas and Brown are liable for the financial damages to Officer Martinez and the damage to Officer Martinez's reputation.

41. Defendant, Brown, should not have immunity from prosecution. He actively impinged Officer Martinez's due process rights by using his power and the political climate regarding police officers to step far beyond the boundaries of his position. Further, Brown's false testimony to city council played a significant role in the city manager's decision to terminate Officer Martinez.

42. Defendant, The City of Dallas, should not have immunity from prosecution. The City of Dallas and DPD hindered Officer Martinez's due process rights by failing to complete an adequate investigation and by holding a specially called city council meeting four days prior to Officer Martinez's appeal was to be heard by the City Manager.

43. Due to lack of impartiality and active interference on by both Defendants, Officer Martinez's Due Process rights were violated.

JESUS MARTINEZ'S CLAIM FOR WRONGFUL TERMINATION

44. Plaintiff incorporates by reference paragraphs 1 through 35 as if fully set forth herein.

45. Defendant's lacked the proper due diligence in their investigation by failing to follow up with potential witnesses and making conclusive findings with the existence of highly contradictory evidence.

46. The DPD's detectives' failure to act diligently in their investigation resulted in Officer Martinez's wrongful termination.

47. Defendant Brown's interference further prevented Officer Martinez from being able to rely on the process and led to his termination from the police force.

48. Officer Martinez is entitled to a fair process before termination and Defendants prevented Officer Martinez from receiving the due process that he is entitled to under the Dallas City Code.

49. If the investigation had been fully and properly conducted, Officer Martinez would not have been fired. Thus, Officer Martinez was wrongfully terminated as a result of due process violations and the lack of a diligent investigation.

DAMAGES FOR PLAINTIFF, JESUS MARTINEZ

50. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff, JESUS MARTINEZ, was caused to suffer harm financially, emotionally, to his reputation, and to incur the following damages:

- A. Loss of earnings in the past;
- B. Loss of earning capacity which will, in all probability, be incurred in the future;
- C. Mental anguish in the past;

- D. Mental anguish in the future;
- E. Reputational damage in the past;
- F. Reputational damage in the future;
- G. Financial loss in the past;
- H. Financial loss in the future.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, JESUS MARTINEZ, respectfully prays that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendants, jointly and severally, for damages in an amount within the jurisdictional limits of the Court; together with pre-judgment interest at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

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PLAINTIFF HEREBY DEMANDS TRIAL BY JURY