

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

Docket No. ★ MAR 23 2017 ★

SEAN McCARTHY,

Jury Trial Demand ~~Long Island~~ OFFICE

Plaintiff,

-against-

COMPLAINT

COUNTY OF SUFFOLK, TIMOTHY SINI,
JOSEPH CAHILL, CHRISTOPHER LOVE,
and LINDA BOUGHEY,

CV - 17 1625

Defendants.

WEXLER, J.

LINDSAY, M.J.

Plaintiff, SEAN McCARTHY, by his Attorney, Michael C. Sordi, Esq.,

Complaining of the Defendants sets forth and alleges as follows:

INTRODUCTION

1. This case is brought to challenge the actions of the Defendants, and each of them, which actions have deprived the Plaintiff of his constitutional right to bear arms for self protection as guaranteed by the Second Amendment to the United States Constitution, together with violations of Plaintiff's rights as guaranteed by the Due Process Clause, both procedural and substantive, the Equal Protection Clause and the Privileges and Immunities Clause of the Fourteenth Amendment to the United States Constitution.

2. Plaintiff Sean McCarthy is a resident of the County of Suffolk, State of New York and he is a natural born citizen of the United States of America.

3. The Defendants and each of them have conspired to and have actually violated the rights of the Plaintiff as guaranteed by the Constitution of the United

States by, among other things establishing, implementing and permitting to exist an unwritten, *Sub Rosa* policy that unduly, artificially and unreasonably delays the processing of, and which then arbitrarily, capriciously, irrationally and motivated by bad faith and in a manner that is so egregious and outrageous as to shock the conscience, virtually automatically denies each application for a pistol license that seeks an endorsement permitting the licensee to carry a pistol concealed and without regard to place or employment in the State of New York, unless the applicant for said license is a retired law enforcement officer in good standing or is a Judge in a Court of Record, or an Assistant District Attorney. This policy is further established, *de facto*, by the complete abrogation of the statutory duties and responsibilities of Defendant Sini as the designated Licensing Officer for the five towns in the western region of Suffolk County as evidenced by the actions and inactions of Defendant Sini including, without limitation, his complete and utter failure to even read the application of the Plaintiff and other similarly situated persons for licensure, and by suffering, permitting and otherwise allowing others within the Suffolk County Police Department to make final determinations of applications for licensure within Suffolk County despite the fact that only Defendant Sini has been designated with legal authority to make these final determinations in accordance with the laws and statutes.

4. The Plaintiff seeks to protect and vindicate his to right to bear arms for self protection without being subjected to the unconstitutionally arbitrary and discriminatory barrier established under color of state law by and through the actions of the Defendants and each of them. Plaintiff seeks monetary damages as a

result of the actions of the Defendants, including punitive damages, and reasonable attorney's fees pursuant to 42 U.S.C. § 1988, as well as seeking injunctive relief to enjoin the Defendants and each of them from subjecting the Plaintiff and other, similarly situated persons from the aforesaid actions of the Defendants.

JURISDICTION AND VENUE

5. Plaintiff alleges deprivation of rights secured by the Second Amendment and by the Due Process and Equal Protection Clauses of the Fourteenth Amendment as protected by 42 U.S.C. § 1983. Jurisdiction over these claims is vested in this Court by 28 U.S.C. §§ 1331, 2201, and 2202.

6. Venue is proper in this District under 28 U.S.C. § 1391 (b) on the grounds that some or all of the conduct at issue took place in, and some or all of Defendants reside in, the Eastern District of New York.

PARTIES

7. Plaintiff Sean McCarthy is a natural born citizen of the United States and at all times mentioned he was and remains a resident of the County of Suffolk and State of New York.

8. Defendant County of Suffolk (hereinafter "County") is a body politic and a Municipal Corporation within the meaning and intendment of the statutes, and it is located wholly within the territorial jurisdiction of this Court.

9. At all times mentioned herein, Defendant Timothy Sini (hereinafter, "Sini") was and remains the Commissioner of Police of the County of Suffolk, State of New York and he is and was a person who is empowered to establish, and who did in fact establish and/or permit to continue policies that bind the County of Suffolk.

In all of his actions and omissions alleged herein, Defendant Sini was acting under color of state law and is being sued in this action in his official capacity pursuant to *Ex Parte Young*, 209 U.S. 123 (1908), and in his individual capacity.

10. At all times hereinafter mentioned, Defendant Joseph Cahill (hereinafter, "Cahill") was and still is a Police Officer and a member of the Suffolk County Police Department. Defendant Cahill was, at all relevant times, a Lieutenant in the said Suffolk County Police Department and he was (but no longer is) the commanding officer of the Pistol License Section or Bureau of the said Suffolk County Police Department. In all of his actions and omissions alleged herein, Defendant Cahill was acting under color of state law and is being sued in this action in his official capacity pursuant to *Ex Parte Young*, 209 U.S. 123 (1908), and in his individual capacity.

11. At all times hereinafter mentioned, Defendant Christopher Love (hereinafter, "Love") was and still is a Police Officer and a member of the Suffolk County Police Department. Defendant Love was, at all relevant times, a Sergeant assigned to the Office of the Commissioner in the said Suffolk County Police Department. In all of his actions and omissions alleged herein, Defendant Love was acting under color of state law and is being sued in this action in his official capacity pursuant to *Ex Parte Young*, 209 U.S. 123 (1908), and in his individual capacity.

12. At all times hereinafter mentioned, Defendant Linda Boughey (hereinafter, "Boughey") was and still is a Police Officer and a member of the Suffolk County Police Department. Defendant Boughey was, at all relevant times an investigating officer assigned to the Pistol License Section or Bureau of the said

Suffolk County Police Department and she was the investigator assigned to review the application of the Plaintiff for a pistol license and to thereafter make a recommendation to Defendant Sini following her said review. In all of her actions and omissions alleged herein, Defendant Boughey was acting under color of state law and is being sued in this action in her official capacity pursuant to *Ex Parte Young*, 209 U.S. 123 (1908), and in her individual capacity.

**BACKGROUND FACTUAL ALLEGATIONS
PERTAINING TO ALL PARTIES**

13. Plaintiff is a person of good moral character who is over the age of 21 and who has never been convicted of a felony or other serious offense, nor is he a fugitive from justice, a user of drugs, or a person suffering from mental disease or defect.

14. In the late 1990's, Plaintiff was employed as a Manager/Doorman at premises known as "The Carousel" located on Jericho Turnpike, Huntington, New York. The said Carousel was a bar that was duly licensed by the NYS State Liquor Authority, and it was euphemistically referred to as a "Gentlemen's Club" by which is meant it was a bar where women danced topless for the entertainment of the patrons.

15. During this time period (mid to late 1990's) members of a criminal enterprise or organization known as "The Pagans Outlaw Motorcycle Club" (hereinafter, "Pagans") existed and operated in Suffolk County, among other places.

16. During this time period (mid to late 1990's), various members of the Pagans attempted to extort the owners of the Carousel, Plaintiff's employers, and they also attempted to extort many of the female employee/dancers of the Carousel.

17. When the Plaintiff found out about the Pagans' attempted and actual extortionate demands described in paragraphs 15 and 16, above, the Plaintiff "banned" all members of the Pagans from entering the Carousel, and he informed them that they were no longer permitted entry there.

18. The Pagans thereafter undertook violent retaliatory actions intended to enforce their extortionate activities and to intimidate the Plaintiff. Specifically, these actions included violently confronting the Plaintiff and initiating fights with him, including beating him about the head and body with fists, kicks, clubs and other weapons, and attempting to burn down the Carousel, but the Plaintiff nonetheless would not submit to their will.

19. In January, 1996, multiple members of the Pagans rushed into the Carousel while the Plaintiff was on duty and working there with the specific purpose of attempting to kill the Plaintiff. During this brief but violent encounter and altercation, Plaintiff was physically and violently and in an unprovoked manner, attacked by no less than seven (7) members of the Pagans who repeatedly struck Plaintiff about the head, face and body with punches and kicks, and with clubs, and the Plaintiff was stabbed at least seven (7) times in various parts of his body quite nearly causing his death and requiring his prolonged hospitalization and recovery thereafter.

20. The acts described in paragraphs 18 and 19, above, took place in the County of Suffolk and State of New York, and the Suffolk County Police Department was the police agency that had actual physical and legal jurisdiction over the investigation of these criminal acts perpetrated against the Plaintiff. Suffolk County

Police Department assigned Detective William Plant to investigate the crimes described hereinabove that were perpetrated against the Plaintiff, but the said Detective Plant intentionally failed to pursue the investigation, he did not interview or take statements from any persons that Plaintiff advised him were eyewitnesses to the events, nor did he arrest any of the persons that Plaintiff identified to him as being among the perpetrators of these criminal acts. To date, Suffolk County Police has not made a single arrest of any persons who participated in the violent, felonious assault and attempted murder against the person of the Plaintiff.

21. Some time in early 1997, the Plaintiff was approached by Suffolk County Police Detective (ret.) Alan Goetz. Detective Goetz informed Plaintiff that he (Goetz) was working with the Federal Bureau of Investigation and he wanted to know if the Plaintiff would speak with the FBI about the activities of the Pagans.

22. Shortly thereafter, SCPD Detective Goetz came to the Carousel with Special Agent David Colletti of the FBI. Special Agent Colletti advised the Plaintiff, in the presence of Detective Goetz, that:

a. The FBI and other law enforcement agencies had the Pagans under investigation for multiple crimes, and under surveillance as well;

b. The FBI had developed credible evidence through undercover operatives and other means that the Pagans had "put out a contract" on Plaintiff's life;

c. That at least two (2) different members of the Pagans had been stopped and/or arrested on unrelated charges at different times and places and both had been found in possession of maps to Plaintiff's home, as well as personal

information such as make, model and license plate numbers of Plaintiff's vehicle and that of Plaintiff's mother;

d. That members of the Pagans were definitively known by the FBI to have conducted surveillance of the Plaintiff's home; and,

e. That the FBI recommended and was offering to place the Plaintiff and his late mother into the Federal Witness Protection Program under the auspices of the US Marshall's Service, including relocating the Plaintiff and providing him with a new identity, an offer that the Plaintiff declined.

23. In December, 1997, Keith Richter, a/k/a Conan, identified by the FBI as the head of the Pagans on Long Island was arrested by the FBI and charged with, among other things, attempted murder, conspiracy to commit murder, extortion and racketeering charges under the Federal RICO statutes. According to the Federal Complaint filed against Richter at that time, the conspiracy to commit murder and the attempted murder charges specifically related to the "contract" that he (Richter) had put out on Plaintiff's life, as described in paragraph 22 above, as well as the actual attempt on Plaintiff's life when he was stabbed no less that seven (7) times. The Federal Criminal Complaint also recited that the Plaintiff had specifically been targeted by Richter and the Pagans for death because the Plaintiff refused to succumb to the attempted extortion demands of the Pagans as against Plaintiff's co-workers and employers.

24. Shortly after the arrest of Keith Richter, a/k/a Conan in December of 1997, members of the FBI, ATF SCPD and other law enforcement agencies fanned out on Long Island and in a pre-dawn raid, arrested more than thirty (30) members

of the Pagans. Charges against those Pagans arrested included racketeering, extortion, conspiracy to commit murder and attempted murder.

25. The prosecution of the Pagans described hereinabove was headed by Assistant US Attorney Gary Brown, who presently serves as a Magistrate Judge in the Eastern District of New York, and by FBI Special Agent David Colletti.

26. The Plaintiff was a key, indispensable witness for the prosecution and against those members of the Pagans that elected to proceed to a trial of the charges against them as outlined hereinabove, as well as being a key and indispensable witness for the prosecution against those Pagans that ultimately decided to accept negotiated pleas.

27. Upon information and belief, all of the Pagans that had been arrested in the pre-dawn raid described in paragraph 24, and Keith Richter, a/k/a Conan who had been separately arrested in December, 1997, either pled guilty, or were found guilty after trial, based in large part upon the cooperation by and the actual testimony of the Plaintiff.

28. In pleading guilty in open Court, Keith Richter, a/k/a Conan admitted that he had ordered the murder of the Plaintiff.

29. Upon information and belief, the aforesaid members of the Pagans described in paragraph 27 above were all sentenced to lengthy terms of imprisonment in Federal Penitentiaries, in many cases exceeding fifteen (15) years.

30. Upon information and belief, many if not all of the Pagans described in paragraph 29, above, have now completed, or are about to complete their lengthy

prison sentences and they are returning to live on Long Island in general, and to the community where Plaintiff lives and works in particular.

31. Many of the Pagans described in paragraph 30, above, have resumed their activities in the criminal enterprise and organization known as The Pagans Outlaw Motorcycle Club, including organizing and participating in an event on November 17, 2015 held at Duffy's Ale House in Lindenhurst, New York that was publicized as the "50th Anniversary and Reopening of the Long Island Chapter" of the Pagans Motorcycle Club of Long Island. Fliers published for this event list "Conan" (Keith Richter) as the "contact" for additional information concerning the said event.

32. Intelligence Bulletins exchanged by and between Suffolk County Police Department, Nassau County Police Department and other local law enforcement agencies in advance of the "event" described in paragraph 31, above, uniformly contained warnings to law enforcement personnel concerning "Officer Safety" in any encounters had with members of this gang, describing "possible threats" posed to officers due to among other reasons "the possibility that gang members will be armed with weapons such as firearms, knives, hammers, axe handles, etc."

33. Reports in Newsday following the event described in paragraph 31, above stated that eleven (11) members of the Pagans and other gangs were stopped and subsequently arrested at or near the time of this "event" and that, "Five handguns, a rifle, a shotgun, marijuana, cocaine, crystal meth, a billy club and three vehicles were seized".

**THE APPLICATION PROCESS
AND THE SO-CALLED INVESTIGATION**

34. In District of Columbia v Heller, 554 U.S. 570 (2008), the Supreme Court found that the Second Amendment, “confer[s] an individual right to keep and bear arms.” Two years later, the Court made clear in McDonald v City of Chicago, 130 S. Ct. 320 (2010), that this individual right is a fundamental one that applies with full force to the States. *Heller* made clear that the Second Amendment protects individual rights as a general matter and the right to keep and bear a handgun for self-protection in the home in particular. *McDonald* recognized that the right protected by the Second Amendment is not just an individual one, but a fundamental right protected against intrusion from state and local governments.

35. Pursuant to New York Penal Law, §265.00(10), Defendant Sini has been designated by the Legislature as the Licensing Officer for the Town of Huntington within the County of Suffolk with respect to applications from persons residing within said Town, including the Plaintiff, seeking a license or permit to own and possess a pistol or pistols.

36. The designation of Defendant Sini by the statute as the Licensing Officer for only a portion of the State of New York makes this “Office” a local office within the meaning and intendment of New York Public Officers Law, §2.

37. New York Public Officers Law §9 permits a Local Officer to designate a deputy or deputies to act in his or her place and stead when the said Officer is unavailable or incapacitated, but only if the appointment of such a deputy or deputies is in a writing that is thereafter duly filed in the Office of the Clerk of Suffolk County.

38. At all times relevant herein, Defendant Sini had not and did not appoint a deputy or deputies to act in his place or stead as the designated "Licensing Officer" pursuant to Penal Law § 265.00(10) by the filing of a writing naming any deputy or deputies with the Office of the Clerk of Suffolk County, as set forth by the statute.

39. As a result of the foregoing, at all times relevant herein, Defendant Sini was the sole person designated by law and duly possessed of the power and authority to approve or disapprove any application for a pistol license filed by any resident of the Town of Huntington, including the Plaintiff.

40. Section 400.00 et. seq. of New York Penal law is the exclusive statutory mechanism for the licensing of firearms in New York State.

41. Penal Law §400.00(1) specifically provides that, "No license shall be issued or renewed pursuant to this section ***except by the licensing officer***, and then only after investigation and finding that all statements in a proper application for a license are true."

42. Licenses are limited to those persons who are over twenty-one years of age, of good moral character, without a history of crime or mental illness, and concerning whom no good cause exists for the denial of the license, including the Plaintiff.

43. On or about November 4, 2015, Plaintiff filed with the Suffolk County Police Department Pistol License Bureau a written application on forms specifically provided to the Plaintiff by the said Pistol Licensing Section or Bureau, which said forms are likewise available on an internet website of the SCPD, seeking a license to

own and possess a pistol or pistols without regard to location or employment.

44. Defendant Boughey was duly assigned as the “Investigating Officer” with respect to the aforesaid application filed by the Plaintiff.

45. The application submitted by the Plaintiff described in paragraph 43, above set forth in great detail, including through the use of exhibits attached thereto, the Plaintiff’s actual and articulable need for self-defense that demonstrated his special need for self-protection that was and remains distinguishable from that of the general community or of persons engaged in the same profession.

46. The application submitted by Plaintiff as described in paragraph 43, above, set forth under oath, the facts essentially set forth in paragraphs 13 through 33, above and it specifically requested that the “Investigating Officer” assigned to Plaintiff’s application contact Assistant US Attorney Gary Brown (now Magistrate Judge Gary Brown), Special Agent David Colletti of the Federal Bureau of Investigation, SCPD Detective (ret) Alan Goetz, as well as the Intelligence Unit of the Suffolk County Police Department in order to verify the claims made by the Plaintiff regarding his actual and articulable need for self-protection that was based upon objective facts and that was likewise distinguishable from other members of the general community.

47. It was and is standard procedure within the Suffolk County Police Department Pistol License Bureau and it is a requirement under the statute that an Investigator assigned to investigate any application presented to the Licensing Officer for a firearms permit/license must conduct an investigation into the applicant’s mental health history, criminal history, moral character, and in the case

of an application for a concealed carry license, representations of proper cause.

48. Defendant Boughey did not contact Assistant US Attorney (now Magistrate Judge) Gary Brown, Special Agent David Colletti of the FBI, or SCPD Detective (ret) Alan Goetz in an attempt to verify the Plaintiff's representations of "proper cause" contained in Plaintiff's application presented to the Licensing Officer.

49. As part of her investigation of Plaintiff's application for licensure, Defendant Boughey was required to confer, consult with and/or otherwise obtain background information from, among others, the SCPD's Central Records Unit or Section, the SCPD's Narcotics Unit or Section, and the SCPD's Intelligence Unit or Section.

50. Defendant Boughey did not confer, consult with or otherwise obtain background information from the SCPD's Intelligence Unit or Section with regard to the representations of special need for self-defense and proper cause set forth by Plaintiff in his application for licensure, or with respect to the current, known activities of members of the Pagans Outlaw Motorcycle Club on Long Island and the risks and dangers, if any posed to members of the public in general, and to the Plaintiff in particular, by these current known activities.

51. The investigation by Defendant Boughey into the representations contained in Plaintiff's application for licensure and his attendant character and background was further compromised and rendered defective and deficient by Defendant Boughey's errors and omissions contained therein including, but not limited to, her erroneous report that the Plaintiff had failed to disclose a traffic summons in his application, when he had in fact made full disclosure of the same,

and by erroneously stating that the Plaintiff had lied in his application when he stated that he resided alone whereas “records” conclusively established that a female resided with the Plaintiff.

52. On or about November 11, 2016, Defendant Boughey issued a “recommendation” that stated, “Applicant applied for a full carry pistol license stating he has reason to fear for his personal safety. It is my opinion that the Applicant failed to establish proper cause for a full carry endorsement. At this time it is my recommendation that a sportman license is granted to the Applicant for home protection”.

53. At the time that Defendant Boughey made the “recommendation” described in paragraph 52, above, she had still not completed her investigation in that, among other things, she had still not conferred, consulted or otherwise obtained any information from SCPD’s Intelligence Unit; she had not yet performed a check of IRS records; she had not yet performed a Multi System check; she had not yet performed a Soundex Check; she had not yet performed a State/Local OOP check; and she had not yet performed a DMV check. All of the foregoing checks and verifications constitute parts of the absolute minimum investigatory steps that are required of an investigation such as Defendant Boughey’s by statute, by the rules and regulations of the Department, and by basic investigatory techniques.

54. Defendant Boughey submitted the aforesaid “recommendation” described in paragraph 52 and 53, above, to Defendant Cahill.

55. On November 15, 2016, Defendant Cahill accepted the said recommendation of Defendant Boughey.

56. Defendant Cahill sent Plaintiff a letter that purported to be a “Pistol License Notice of Approval (Notice of Disapproval of Full Carry Request)” that was dated November 11, 2016, or some four (4) days prior to his “acceptance” of the recommendation of Defendant Boughey described in paragraphs 52 and 53, above, and prior to the completion of a proper, thorough and accurate investigation of Plaintiff’s application for licensure, including Plaintiff’s representations concerning proper cause to possess a pistol or pistols without limitation to place and without limitation regarding employment.

57. At all relevant times, Defendant Cahill was not the Licensing Officer designated by statute with the power and authority to consider and approve or disapprove of an application for a firearms license submitted by an applicant residing within the Town of Huntington, State of New York, nor was Defendant Cahill appointed as a Deputy to the statutorily designated Licensing Officer in a writing that was duly filed with the Office of the Clerk of Suffolk County. As such, Defendant Cahill was without all legal power, authority, right or ability to issue any agency determination of Plaintiff’s application for licensure, including but not limited to the purported determination contained in Defendant’s letter dated November 11, 2016 described in paragraph 56, above.

58. The letter signed by Defendant Cahill, dated November 11, 2016 denied to Plaintiff his application to obtain an unrestricted carry pistol license on the purported ground that the Plaintiff had purportedly failed to establish “proper cause” in his licensure application, a term that Defendant Cahill erroneously stated was defined to be, “You must show that you are exposed to extraordinary personal

danger, documented by proof of **recurrent** threats to life or safety, requiring authorization to carry a firearm.”

58. Defendant Sini did not read Plaintiff’s Application for licensure at any time on or before November 11, 2016.

59. Defendant Sini did not read the investigative report prepared by Defendant Boughey pertaining to Plaintiff’s application for licensure at any time on or before November 11, 2016.

60. Defendant Sini did not discuss the results of Defendant Boughey’s investigative report pertaining to Plaintiff’s application for licensure, the recommendation of Defendant Boughey, or the recommendation and/or purported agency determination of Defendant Cahill with either Defendant Boughey or with Defendant Cahill at any time on or before November 11, 2016.

61. The letter described in paragraph 56, above that was signed by Defendant Cahill contained advice that an “internal appeals process” was available to the Plaintiff from the “determination” contained in said letter.

62. No authorization nor procedural guidelines exists for the “internal appeals process” described in paragraph 61, above, in any state, federal or local law or in any Suffolk County Police Department Patrol Guide, Rules & Regulations or other procedural manual of whatever name.

63. Plaintiff prepared, executed and delivered to Defendant Sini a written “appeal” from the letter dated November 11, 2016 and signed by Defendant Cahill that purported to be an agency determination granting Plaintiff a pistol license for “home”, but denying his application for an unrestricted carry endorsement.

64. Defendant Sini did not read Plaintiff's written "appeal" described in paragraph 63, above, at any time on or before December 20, 2016.

65. Defendant Sini did not discuss the results of Defendant Boughey's investigative report pertaining to Plaintiff's application for licensure, the recommendation of Defendant Boughey, or the recommendation and/or purported agency determination of Defendant Cahill of November 11, 2016, or the written "appeal" by the Plaintiff from that purported agency determination with either Defendant Boughey, Defendant Cahill or Defendant Love at any time on or before December 20, 2016.

65. On December 20, 2016, Defendant Love signed and transmitted to Plaintiff what purported to be a "final agency determination" regarding Plaintiff's application for licensure as well as his "appeal" from the November 11, 2016 letter determination of Defendant Cahill described hereinabove in which Defendant Love sustained the purported "determination" made by Defendant Cahill and denied Plaintiff's application for an unrestricted carry pistol license.

66. At all relevant times, Defendant Love was not the Licensing Officer designated by statute with the power and authority to consider and approve or disapprove of an application for a firearms license submitted by an applicant residing within the Town of Huntington, State of New York, nor was Defendant Love appointed as a Deputy to the statutorily designated Licensing Officer in a writing that was duly filed with the Office of the Clerk of Suffolk County. As such, Defendant Love was without all legal power, authority, right or ability to issue any final agency determination of Plaintiff's application for licensure, including but not limited to the

purported determination contained in Defendant Love's letter dated December 20, 2016 described in paragraph 65, above.

67. The letter signed by Defendant Love dated December 20, 2016 that purported to be a final agency determination with respect to Plaintiff's application for licensure, in addition to being without legal authority, was also effected by errors of law in that it applied an incorrect legal standard for the term, "proper cause".

68. Defendant Love is an attorney admitted to practice law in New York and he is self-described as the former Commanding Officer of the Suffolk County Police Department Legal Bureau, presently assigned to the Commissioner's Office to act as a "Legal Review Officer". His Letter of December 20, 2016 that purported to be a final agency determination and that applied an incorrect legal standard was therefore done intentionally and with the full knowledge that Defendant Love did not possess legal power or authority to act as the Licensing Officer or to make a final agency determination, or any determination with respect to Defendant's application for licensure, and it was done, made and rendered with the intentional purpose of delaying and ultimately denying Plaintiff's rights guaranteed under the constitution and the laws.

69. Defendant Sini did not read the letter dated December 20, 2016 that was signed by Defendant Love and that purported to be a final agency determination at any time on or before December 20, 2016.

70. Defendant Sini did not discuss the results of Defendant Boughey's investigative report pertaining to Plaintiff's application for licensure, the

recommendation of Defendant Boughey, or the recommendation and/or purported agency determination of Defendant Cahill of November 11, 2016, or the written “appeal” by the Plaintiff from that purported agency determination, or the recommendation that purported to be a final agency determination made by Defendant Love on December 20, 2016 with either Defendant Boughey, Defendant Cahill or Defendant Love at any time on or before December 20, 2016.

PROCEDURAL DUE PROCESS

71. Penal Law §400.00(4-a) mandates that the licensing officer shall act upon any application for a license within six (6) months of the date of presentment of such application to the appropriate authority.

72. Defendant Sini has established a policy, or he has knowingly permitted his subordinates in the Pistol License Section or Bureau of the Suffolk County Police Department to intentionally, deliberately, knowingly and maliciously maintain a practice and policy of indefinitely delaying any action on applications to the licensing officer for licensure, thereby creating excessive, unwarranted delays to the liberty interests of applicants, including the Plaintiff that renders prescribed procedures meaningless and that deprive applicants, including the Plaintiff, of due process of law including effectively preventing judicial review of the actions and inactions of the Defendants for indefinite and inordinate periods of time.

73. These inordinate, unwarranted and excessive delays include presenting potential applicants who inquire about required application forms, including the Plaintiff with a “Questionnaire” to complete, rather than an actual License Application; instructing applicants, including the Plaintiff, that they need not

supply a photograph taken within thirty (30) days when filing their application because the Pistol License Section would take a digital photograph at the time of an in-person interview. Thereafter, when applicants, including the Plaintiff complete the "Questionnaire" they have been provided and return it to the Pistol License Section of SCPD and pay the fees provided for by statute without photographs, as specifically instructed by the Defendants, the Defendants nonetheless and each of them claimed through artifice and sophistry that there had been no application presented to the licensing officer that would start the six (6) month time period provided by statute to act upon said license application because applicants, including the Plaintiff had not submitted an actual "application", but only a "Questionnaire" and, moreover, applicants, including the Plaintiff, had not submitted the photographs required by statute that would make their application complete.

74. The Defendants, and each of them have conspired to and have actually deprived applicants for licensure, including the Plaintiff, of their rights to due process of law in their intentional, knowing, malicious, artificial, unreasonable, excessive and unwarranted indefinitely delaying of the processing of and the final action on license applications through this series of actions and inactions that are in direct violation of statute, and in direct violation of the rights of applicants, including the Plaintiff.

SUBSTANTIVE DUE PROCESS

75. Defendant Sini has established a policy by which applicants for full, unrestricted carry pistol licenses, other than retired law enforcement officers in good standing, Judges, or Assistant District Attorneys, virtually automatically have

their applications denied without regard to whether that applicant, including the Plaintiff, can meet all of the basic threshold requirements for licensure and the added threshold of establishing “proper cause”, i.e. demonstrating a special need for self-protection that is distinguishable from other members of the general community or of persons engaged in the same profession.

76. The Defendants and each of them have conspired to establish and have put into place a policy by which applicants for full, unrestricted carry pistol licenses, other than retired law enforcement officers in good standing, Judges, or Assistant District Attorneys, virtually automatically have their applications denied without regard to whether that applicant, including the Plaintiff, can meet all of the basic threshold requirements for licensure and the added threshold of establishing “proper cause”, i.e. demonstrating a special need for self-protection that is distinguishable from other members of the general community or of persons engaged in the same profession.

77. In 1996, the Suffolk County Legislature took specific note of the fact that the Licensing Officers¹ in Suffolk County were failing to act in accordance with the standards set forth in the Penal Law with respect to firearms licensure within the County. The said Suffolk County Legislature therefore Amended §13-4 of the Suffolk County Code and §17-2 of the Suffolk County Charter so as to require the Licensing Officer[s] to specifically adhere to Penal Law §400. In a statement of Legislative intent accompanying the aforesaid Amendments the Legislature stated

¹ The statute specifically designates the Sheriff of Suffolk County as the Licensing Officer for the County, except in the five (5) most western Towns of the County where the Commissioner of Police is designated as the Licensing Officer.

that,

“This Legislature hereby finds and determines that Section 400 of the NEW YORK PENAL LAW specifically delineates the types of licenses to be Issued by municipal licensing officers for firearms, This Legislature further finds that the Department has, over the years, as the local licensing officer for the western-end portion of Suffolk County, exceeded these standards by imposing restrictions or conditions on licenses to the detriment of licensees. Therefore, the purpose of this law is to require that all licensing officers in Suffolk County adhere strictly to State law when issuing firearms licenses”.²

78. Defendant County of Suffolk and Defendant Sini intentionally, knowingly, willfully, maliciously have suffered, allowed and permitted this policy and practice that violates the constitutional and statutory rights of applicant’s for firearms licenses to continue to this day.

79. New York maintains a general prohibition on the possession of firearms absent a license. Section 400.00 of the Penal Law is the exclusive statutory mechanism for the licensing of firearms in New York State. Licenses are limited to those over twenty-one years of age, of good moral character, without a history of crime or mental illness, and concerning whom no good cause exists for the denial of the license. Kachalsky v County of Westchester, 701 F.3d 81 (2012).

80. Plaintiff meets and/or exceeds every basic requirement for a prospective licensee set forth in paragraph 79, above.

81. Plaintiff sought a license available under section 400(2)(f) of the Penal Law so that Plaintiff could own, possess and carry a firearm or firearms, in particular a pistol or pistols, concealed and without regard to location or type of

² See, Suffolk County Legislature, Local Law No. 18-1996 amending Section 13-4 of the Suffolk County Code and Section 17-2 of the Suffolk County Charter and the Statement of Legislative Intent accompanying this said Local Law.

employment, i.e. a concealed carry license.

82. A person who seeks a license described in paragraph 81, above, must meet the requirements described in paragraph 79, above, and must also demonstrate “proper cause” to receive such a license. The term “proper cause” is not defined in the statute, but it has for a long time in New York been clearly established to mean that an applicant for such a license must demonstrate a special need for self-protection distinguishable from that of the general community or of persons engaged in the same profession. A generalized desire to carry a concealed weapon to protect one’s person and property does not constitute proper cause, nor is living or being employed in a high crime area. When, on the other hand, a person, such as the Plaintiff, has an actual and articulable – rather than merely speculative or specious – need for self-defense, then proper cause has been met. See, Kachalsky v County of Westchester, 701 F.3d 81 (2012).

83. The Second Amendment to the Constitution guarantees individuals, including the Plaintiff, the right to possess firearms, including a pistol or pistols for self-defense and Civil Rights Law, §5 likewise guarantees this right.

84. The Defendants, and each of them, have knowingly, intentionally, willfully and maliciously conspired to and have actually denied to Plaintiff the rights described in paragraph 83, above, under color of state law.

85. The Defendants and each of them have denied Plaintiff his rights by among other things, unduly, unreasonable and without just cause or reason delaying indefinitely Plaintiff’s application for licensure; by knowingly, intentionally and maliciously failing to perform a thorough, complete and accurate background check

and verification of Plaintiff's stated reasons for needing an unrestricted carry license, or proper cause; by knowingly, intentionally and maliciously establishing a policy under which applicants for licensure, and specifically unrestricted carry licenses are denied those licenses regardless of whether or not the applicant, including the Plaintiff, can and have adequately demonstrated proper cause unless the applicant is a retired police officer, a judge, or an assistant district attorney; by Defendant Sini in particular knowingly, intentionally and maliciously abrogating his statutory duty by failing to read Plaintiff's application for licensure, failing to read or discuss the recommendations made by investigating officers, and by allowing, suffering and permitting subordinate officers in the Suffolk County Police Department to act as if they were the duly designated licensing officer while knowing that those persons had no statutory or other legal authority to so act; by suffering permitting and allowing, intentionally, knowingly and with malice those persons to issue what purported to be agency determinations that were knowingly based upon incorrect legal standards that imposed restrictions and conditions on Plaintiff's license that were in excess of the lawful limitations of the statute and which were so arbitrary and capricious and without any basis in fact or reason as to shock the conscience.

EQUAL PROTECTION

86. The equal protection clause is a direction that all persons similarly situated be treated alike.

87. The Defendants, and each of them, have engaged in a pattern of

behavior that has evidenced an intent to single out the Plaintiff and other applicants for pistol licenses that are located in the western five (5) towns of Suffolk County and to treat them differently from all other similarly situated persons throughout New York, in general, and even within Suffolk County in particular, thereby depriving him of the right to equal protection under the law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Sean McCarthy requests judgment against Defendants and each of them as follows:

- A.** For appropriate declaratory relief regarding the unlawful and unconstitutional acts and practices of the Defendants and each of them;
- B.** For appropriate compensatory damages in an amount to be determined at trial;
- C.** For appropriate punitive damages in an amount to be determined at trial;
- D.** For appropriate equitable relief against all Defendants as allowed by the Civil Rights Act of 1871, 42 U.S.C. Section 1983, including the enjoining and permanent restraining of these violations, and direction to Defendants to take such affirmative action as is necessary to ensure that the effects of the unconstitutional and unlawful practices are eliminated and do not continue to affect Plaintiff, or others;
- E.** For an award of reasonable attorney's fees and costs on Plaintiffs' behalf expended as to such Defendants pursuant to the Civil Rights Act of 1871, 42 U.S.C. Section 1988; and

F. For such other and further relief to which Plaintiffs may show themselves to be justly entitled.

**Dated: Northport, New York
March 21, 2017**

Respectfully submitted,


A handwritten signature in black ink, appearing to read "Michael C. Sordi", is written over a horizontal line.

Michael C. Sordi 2915
Attorney for Plaintiff
P.O. Box 759
9 Harrison Woods Court
Northport, New York 11768
(516) 639-5437

VERIFICATION:

**STATE OF NEW YORK)
COUNTY OF SUFFOLK)**

Sean McCarthy, being duly sworn says that he is the Plaintiff in the captioned matter, he has read the foregoing Complaint and he is familiar with its contents; the same are true to his own knowledge, except as may be otherwise indicated to be based upon information and belief and as to those allegations, Plaintiff believes them to be true.



Sean McCarthy

Sworn to before me this
21st day of March, 2017



Michael C. Sordi
Notary Public, State of New York
No. 02S06257251
Qualified in Suffolk County
Commission Expires 6/21/2020

CASE No.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SEAN McCARTHY,

Plaintiff,

-against-

COUNTY OF SUFFOLK, TIMOTHY SINI
JOSEPH CAHILL, CHRISTOPHER LOVE
And LINDA BOUGHEY,

Defendants.

SUMMONS AND COMPLAINT

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the Courts of New York State, certifies that upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous, and that (2) if the annexed document is an initiating pleading (i) the matter was not obtained through illegal conduct and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a..

Michael C. Sordi, Esq.

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