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NOV 09 2011

ATLANTIC COUNTY  
LAW DIVISION

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COLLEEN FELIX,

Plaintiff

v.

CITY OF BRIGANTINE,

Defendant.

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION/CIVIL PART  
ATLANTIC COUNTY

DOCKET NO.

*L-9692-11*

Civil Action

COMPLAINT, JURY DEMAND AND  
DESIGNATION OF TRIAL COUNSEL

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Colleen Felix, residing at 1312 Bay Avenue in Brigantine, Atlantic County, New Jersey, complaining against the defendant, states as follows:

**FIRST COUNT**

(New Jersey Law Against Discrimination, N.J.S.A. 10:5-12)

1. Plaintiff Colleen Felix was and is employed by the City of Brigantine, specifically within the Department of Public Safety as a police records clerk. Plaintiff commenced employment with the Police Department more than a decade ago on November 19, 2001 as a part-time employee and became a full-time employee on December 17, 2001. Plaintiff has consistently and progressively demonstrated her proficiency in the position and has throughout the course of her tenure received nothing but positive evaluations on her performance and consistent verbal commendations on her industriousness and conscientiousness in performing her job. Plaintiff has never been the subject of disciplinary action, and has served under the authority of three different Chiefs of Police.

2. From the date of her hire to the present day, the Brigantine City Police Department is predominantly staffed by male police officers, and male supervisors and command staff. Plaintiff has throughout the course of her employment maintained a professional relationship with all of them, notwithstanding that she has historically been only one of three females working within the entire police department. Plaintiff's job responsibilities include a multitude of tasks, most of which require direct contact with most all department members on a daily basis and has never previously complained, informally or formally, against any other male member of the department for over a decade. Plaintiff did however, remain in a state of fear, intimidation and trepidation for more than a year's timeframe, specifically throughout the appointment of James Frugoli as chief of police.

3. In July 1, 2008, Arthur Gordy retired as the Brigantine Police Chief after serving 33 years. The City's appointment of James Frugoli as Gordy's successor substantially altered the terms and conditions of the plaintiff's workplace. As the police records clerk, plaintiff was required to maintain almost daily contact with the Chief of Police. Plaintiff's job function mandated continuous contact with the Chief and command staff for everything from preparing police reports and documents, to delivering or shuttling documents and materials to, from or past the Chief of Police. The physical proximity of plaintiff's work space to the Chief and command staff, as well as the nature of her duties, necessitated frequent personal contact with the Chief, either directly or simply by passing his office or passing him in the hallways or work areas of the department. Prior to Frugoli's appointment as chief, plaintiff cherished her position

within the department, enjoyed her time spent working for the City's provision of public safety and viewed her role as an integral part of the department's operation.

4. Seven months later, plaintiff had "broken down" in the presence of command officers when she learned that Frugoli had decided to withdraw his notice of retirement. Frugoli had announced his intention to retire, then told members of the department that he had reconsidered and decided to stay in as the Chief. That announcement terrorized the plaintiff. She had for more than the last four years, endured Frugoli's intentional and purposeful pattern and practice of sexual harassment. Plaintiff had been continuously subjected to Frugoli's sever and pervasive sexual misconduct, both verbally and through affirmative physical contact and conduct, for more than four years. Upon his appointment to Chief, however, plaintiff became a captive play toy of Frugoli, unable to avoid or prevent Frugoli's daily and intensive presence and control.

5. Defendant Frugoli did throughout his entire tenure, require the plaintiff to accept as a condition of her workplace, discriminatory conduct based exclusively upon her sex. Defendant did that both verbally and physically. Frugoli would consistently refer to the plaintiff as "babe" or "honey" in the course of their daily interactions. Frugoli would also with disturbing regularity, jokingly identify the plaintiff in the presence of others, or in a much more sexually suggestive tone when alone with plaintiff, as "sweet lips", "sugar lips" and "hot lips". Frugoli went so far as to refer to the plaintiff to two outside business vendors of the department as "my luscious secretary".

6. Defendant Frugoli would intentionally convey his motivation and sexually subjective purpose by regularly placing himself directly on top of or behind the plaintiff in

an effort to overtly suggest sexual intimacy. Frugoli would often stalk the plaintiff throughout the police department, at times finding her at the copy machine or a work table while she was preparing, sorting or compiling police reports. On various occasions, Frugoli would enter a room or location where the plaintiff was working and stand directly behind her so that the plaintiff would have to move her torso so as to prevent the defendant's body from touching her. Frugoli would routinely stand over the plaintiff while she sat or next to the plaintiff while she stood so close that she could feel his breath on her neck, causing her to adjust her stance or position to disengage from the defendant's body.

7. Defendant Frugoli would often acknowledge his motivation and attention to the plaintiff by the statements he would make at times directly to her and at other times in the presence of others within the police department. Frugoli would concentrate by staring or leering at the plaintiff's buttocks whenever she leaned over a table, the copy machine, or in other circumstances. He would even on occasion comment directly, utilizing some element of the plaintiff's wardrobe to accent his interest in his physicality. For example, defendant at one point proclaimed that plaintiff had "pennies on her ass" referring to copper buttons on the back pockets of her jeans while she bent over a filing cabinet while working on police reports.

8. Defendant's verbal and physical conduct was not only pervasive, it was open and notorious. Given his position as the chief executive in the department, defendant viewed himself as untouchable and executed his power and authority as a vehicle to keep the plaintiff in silent suffering and all that observed his conduct in fear. Defendant would for example enter a room where the plaintiff was engaged in work or

discussion with other commanders and position himself behind the plaintiff so that she had to adjust her position to avoid rear contact. On one occasion, defendant stuck his finger in the plaintiff's ear. Other witnesses on multiple occasions, observed the defendant watch by conspicuous stare and visual direction to the plaintiff's buttocks as she walked away, grunted when she passed by his office or him personally, and even stuck out his tongue and made it "flicker" in an effort to imitate cunnilingus.

9. Defendant Frugoli utilized his function and power as the chief of police to force the plaintiff to accept his severe and pervasive sexual harassment as a required term and condition of her employment. Defendant would mandate that the plaintiff provide him on a daily basis, either by call or text, her entry, exit and any absence from the police department. Defendant would eerily appear in the immediate proximity of the plaintiff while she performed her various tasks and duties throughout the department. Plaintiff was Frugoli's focus, both in terms of the microscopic superintendence he paid to her performance of work and as a captive recipient of the defendant's sexual expressions.

10. Defendant City of Brigantine, did at all times relevant hereto, delegate to defendant Frugoli the authority and power to control the terms and conditions of the plaintiff's work and work environment, and knew or should have known that Frugoli had abused that authority by creating an intimidating, hostile and abusive work place that no reasonable woman would be expected to tolerate or endure. Defendant City of Brigantine by and through its supervisory and command officers, knew of the defendant's severe and pervasive sexual discrimination, knew of their duty to terminate and prevent the defendant's notorious illegal conduct, and knew further that the failure

to remediate the cancer of discrimination would cause the plaintiff substantial injury and damages.

11. Defendant City of Brigantine did, by and through the actions and conduct of the Chief of Police, and by and through its own delegation and negligence, proximately cause the plaintiff to suffer, substantial and permanent injuries and damages, including but not limited to severe emotional distress, physical injury and humiliation.

WHEREFORE, plaintiff demands judgment against the defendant as follows:

- a. Compensatory damages pursuant to N.J.S.A. 10:5-13;
- b. Punitive damages pursuant to N.J.S.A. 10:5-13;
- c. Award of attorneys' fees, costs of suit and interest pursuant to N.J.S.A. 10:5-27.1;
- d. An assessment of civil penalty pursuant to N.J.S.A. 10:5-14.1a;
- e. Any other relief the Court deems equitable and just.

### **SECOND COUNT**

(Defendant's Breach of Contract)

1. Plaintiff repeats and incorporates all allegations contained in The First Count as if fully set forth herein at length.

2. On March 30, 2010 plaintiff entered into a mutual Settlement Agreement and release with the City of Brigantine. (Exhibit A). In that Settlement Agreement, plaintiff agreed to release and forever discharge the City for any and all claims and causes of action she maintained including those rights asserted in Count One pursuant to the New Jersey Law Against Discrimination. Plaintiff did that in consideration for the City's covenant that it would "not [to] disclose or discuss the existence or facts of the

personnel matter to any third party unless compelled to do so by Order of a court of law." The Settlement Agreement between the parties so provided in ¶1c.

3. Notwithstanding the critical contractual terms of that Settlement Agreement, most importantly the duty not to disclose or discuss even the existence let alone the facts of the Settlement Agreement and the plaintiff's claims, defendant City of Brigantine breached each and every duty of care promised by virtue of that Agreement.

4. On April 9, 2010, the business manager for the City of Brigantine commented publicly to the citizens of Atlantic County and beyond as follows:

"There was an internal investigation, and we are confident (in its results)," . . . "There were a lot of rumors, but did anything really occur? No." Barber said he could not comment on the specifics of the investigation except that it has been concluded and did not turn up anything that would have an effect on Frugoli's retirement and his \$159,778 retirement package. . ."

(Exhibit B, Atlantic City Press article, April 9, 2010).

5. Defendant City of Brigantine did by virtue of the publications by Manager Barber, not only disclose the "existence" of the personnel matter, he did in fact specifically comment on its alleged result. While Barber's comment was in direct contradiction to the actual findings of that investigation, he expressed that nothing had occurred, an obvious purpose to disclose both the existence and conclusion of the personnel matter. Defendant's publication is a direct and substantial breach of the Settlement Agreement.

6. Defendant City of Brigantine additionally utilized deception and unseemingly conduct in its methods in coercing and inducing the plaintiff to enter the settlement agreement in the first instance. Following disclosure of defendant Frugoli's illegal conduct, plaintiff met directly with City Manager Barber regarding the sexual

harassment. Mr. Barber told the plaintiff that "it's not that I don't believe you, but it's hard to believe". Further, that he didn't have "a lot of options" as he could not "transfer the Chief". According to Barber, the investigation did not establish a serious or terminable offense by Chief Frugoli. Further, plaintiff had no choice but to accept administrative leave from the Department. Moreover, both Barber and the City's investigator confirmed and assured her that her identity would remain secret so as to shield her from the humiliation and disgrace of having been responsible for an investigation that resulted in the exoneration of the Chief. Ultimately, the City's investigation was ordered public by the Hon. Nelson Johnson, J.S.C. on February 25, 2011. Notwithstanding the City's full and complete opportunity to redact the report so as to completely conceal the plaintiff's identity and identifiers, the City failed to do so. The report, Exhibit C, contains specific reference to the peculiar facts involving the plaintiff and her daughter and a lawsuit filed against the City for a motor vehicle accident resulting in permanent injuries to her daughter. On page 6 of the report, specific mention is made as follows:

. . . believe that the Chief was upset because she had filed a lawsuit against the City of Brigantine on behalf of her daughter who had been in a car accident involving a city ambulance.

(Exhibit C, p6).

7. Plaintiff had not been consulted for the purpose of redacting any part of the investigation report, and was not aware that the report was ordered disclosed. Defendant City of Brigantine, knowing of its covenants and obligations pursuant to the Settlement Agreement, negligently failed to properly redact that part of the report which clearly identified the plaintiff given that the lawsuit mentioned was not only filed in the Superior Court, it was published in the local media extensively.



8. Defendant City of Brigantine has by virtue of the above, breached the material and preeminent term of the Settlement Agreement, thereby relieving the plaintiff of any obligation thereunder. Nolan by Nolan v. Lee Ho, 120 N.J. 465, 472 (1990). Moreover, the City's factual misrepresentations and false statements of fact were designed for the purpose and did cause plaintiff to enter into the aforementioned Settlement Agreement by use of deception, coercion, and unseemingly conduct. As such, the Settlement Agreement cannot be honored. Kaur v. Assured Lending Corp., 405 N.J. Super. 468, 475 (2009).

WHEREFORE, plaintiff seeks declaration and judgment of the Superior Court nullifying the Settlement Agreement of March 30, 2011 as mandated by law.

#### **RULE 4:5-1 CERTIFICATION**

Pursuant to R. 4:5-1, I hereby certify that to the best of my knowledge, information and belief, the matter in controversy is not the subject of any other action pending in any Court or arbitration proceedings, and no other action is contemplated. I know of no other parties that should be joined herein.

#### **CERTIFICATION OF COMPLIANCE WITH R. 1:38-7(c)**

I certify the Confidential Personal Identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

**JURY DEMAND PURSUANT TO R. 1:8-1(b) and R. 4:35-1**

Plaintiff Colleen Felix hereby requests trial by jury as to all issues herein.

Jacobs & Barbone, P.A.

By:

  
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Louis M. Barbone, Esquire

Dated: November 4, 2011

**NOTICE OF DESIGNATION OF TRIAL COUNSEL**

Plaintiff Colleen Felix hereby designates Louis M. Barbone, Esquire as trial counsel in the within matter.

Jacobs & Barbone, P.A.

By:

  
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Louis M. Barbone, Esquire

Dated: November 4, 2011