

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

Michael H. Rosfeld,

Plaintiff,

vs.

The University of Pittsburgh – of
the Commonwealth System of
Higher Education, James K. Loftus, and
Kathy Humphrey,

Defendants.

No.: GD

20 836

Code:

COMPLAINT

Filed on behalf of:
Michael H. Rosfeld, Plaintiff

Counsel of Record for This
Party:

TIMOTHY G. UHRICH, ESQUIRE
PA. I.D. No. 54872

1400 The Allegheny Building
429 Forbes Avenue
Pittsburgh, Pennsylvania 15219
(412) 434-6620

FILED

20 JAN 16 PM 1:06

DEPT. OF COURT RECORDS
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY PA

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NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

**Lawyer Referral Service
Allegheny County Bar Association
11th Floor, Koppers Building
436 7th Avenue
Pittsburgh, Pennsylvania 15219
(412) 261-5555**

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

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Defendants.

COMPLAINT

AND NOW comes Michael H. Rosfeld, Plaintiff in the within matter, by and through his counsel, Timothy G. Uhrich, Esquire, and in support of the within Complaint, sets forth:

PARTIES

1. Plaintiff is Michael H. Rosfeld, who resides in the municipality of Penn Hills, Allegheny County, Commonwealth of Pennsylvania.

2. Defendant University of Pittsburgh of the Commonwealth System of Higher Education is a university organized pursuant to the laws of the Commonwealth of Pennsylvania and which is located at 4200 Fifth Avenue, Pittsburgh, Allegheny County, Pennsylvania 15260.

3. Defendant James K. Loftus is the Chief of Police for the University of Pittsburgh Police Department that is located in the Jerome Cochran Public Safety Building, 3412 Forbes Avenue, Pittsburgh, Allegheny County, Pennsylvania 15260, and who at all time incident hereto, was acting in his capacity as the Chief of Police for the University of Pittsburgh Police Department.

4. Defendant Kathy Humphrey is the Senior Vice Chancellor for Engagement and Secretary of the Board of Trustees for the University of Pittsburgh, and whose office is located at 4200 Fifth Avenue, Pittsburgh, Allegheny County, Pennsylvania 15260.

NATURE OF THE ACTION

5. This matter is brought pursuant to Section 1 of the 14th Amendment to the Constitution of the United States which provides that no person shall be deprived of life, liberty, or property without due process of law.

6. This matter is brought pursuant to Article I, Section I of the Constitution of the Commonwealth of Pennsylvania, which provides that men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

7. This matter is brought pursuant to 42 U.S.C. §1983, which provides that no entity or person, under the color of law, shall deprive a person within its jurisdiction of any right or privilege guaranteed and secured by the Constitution of the United States; and further, that any person or entity depriving a person of any right or privilege guaranteed and secured by the Constitution of the United States shall

be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

8. This matter is brought pursuant to *Cleveland Board of Education v. Loudermill* 470 U.S. 532 (1985), which held that a public employee has a property right in his employment, and therefore prior to a termination of employment, must be provided notice of the charges against the employee, an explanation of the employer's evidence, and an opportunity to respond to the charges alleged.

FACTS

9. At all times incident hereto, Plaintiff Rosfeld was employed as a police officer with the Defendant University of Pittsburgh, having commenced employment on October 15, 2012.

10. On the evening of December 9, 2017, Plaintiff Rosfeld was acting in his capacity as a University of Pittsburgh Police Officer when he responded to an incident at the Garage Door Saloon, which is located at 219 Atwood Street, Pittsburgh, Allegheny County, Pennsylvania 15213, and which is within the jurisdictional limits of the University of Pittsburgh Police Department.

11. Plaintiff Rosfeld arrived on the scene of the incident at approximately 11:02 p.m., shortly after the commencement of his shift, to assist University of Pittsburgh police officers Josh McGinnis and Adam Dimit.

12. Upon arrival, Plaintiff Rosfeld encountered Timothy Riley, Jacob Schilling, and Daniel Humphrey, all of whom were under the custody and control of Officer McGinnis.

13. Daniel Humphrey is the son of Defendant Kathy Humphrey.

14. Upon investigation, Plaintiff Rosfeld determined that Riley, Schilling and Humphrey had been ejected from the Garage Door Saloon for unruly behavior.

15. As part of his investigation of the incident, Plaintiff Rosfeld entered the premises of the Garage Door Saloon at 11:10:08 p.m. to review security footage of what had occurred both inside and outside of the Garage Door Saloon prior to his arrival.

16. Plaintiff Rosfeld was able to scrub back video surveillance to view the actions of the three actors from the time they were removed from the bar at 10:57:37 p.m. until Defendant Rosfeld's arrival at 11:01:56 p.m. Plaintiff Rosfeld's review of the surveillance video revealed the following:

a. Riley and an unidentified male were removed from the premises at 10:57:39 p.m., at which time the unidentified male kicked the entry door to the bar, causing it to shatter. The unidentified male then fled the scene.

b. At 10:57:50 p.m. Schilling and Humphrey were ejected from premises.

c. At 10:58:00 p.m. Schilling struck a Garage Door employee with his fists.

d. At 10:58:10 p.m. Riley and Humphrey raised fists and struck a Garage Door employee.

e. From 10:58:00 p.m. to 10:58:58 p.m., Schilling held open the door to the Garage Door while Schilling, Riley and Humphrey attempted to regain entry to the Garage Door, thereby remaining at and

attempting to gain access to a premises from which they were removed, and a premises for which they had no legitimate purpose to remain.

17. Following his review of the surveillance video, Plaintiff Rosfeld exited the bar at 11:11:52 p.m.

18. As a result of the investigation, which included his personal encounter with each of the three actors, Plaintiff Rosfeld effected a lawful arrest and filed criminal charges against all three actors, to include simple assault, disorderly conduct, defiant trespass and public intoxication.

19. At the conclusion of the incident, Plaintiff Rosfeld transported all three actors to the Allegheny County Jail. He concluded his shift at 7:00 a.m. on December 10, 2017.

20. Subsequently, on the morning of December 11, 2017, Deputy Chief Holly Lamb and Officer David Basile appeared at the home of Plaintiff Rosfeld and informed Plaintiff Rosfeld that an investigation concerning him had been initiated. Neither Lamb nor Basile informed Plaintiff Rosfeld as to the nature of the investigation, only that one had been commenced.

21. Deputy Chief Lamb then confiscated Plaintiff Rosfeld's Municipal Police Officers' Education and Training Commission (MPOETC) identification card, informed him that he was on administrative leave, and instructed him to await further contact from his superiors.

22. Approximately six (6) weeks later, Plaintiff Rosfeld was contacted by Commander Robert L. Holler of the Pitt Police, who directed him to appear at Pitt Police headquarters on January 18, 2018.

23. Upon arrival on January 18, 2018, Plaintiff Rosfeld was met by Defendant Loftus, Deputy Chief Lamb, and Commander Holler. Also present were Pitt Police Officers Debrosky and Petersen.

24. Immediately upon his arrival, and without discussion or explanation, Plaintiff Rosfeld was handed a document in memorandum form from Defendant Loftus, dated January 18, 2018, which stated:

“Your employment with the University of Pittsburgh Police is terminated effective today, Thursday, January 18, 2018. This is in reference to Internal Investigation #17-04683.”

25. It is believed, and therefore averred, that the investigation involved the Garage Door Saloon arrest, in that the incident report generated by Plaintiff Rosfeld was identified as “Complaint/Incident Number 17-04683.”

26. At no time prior to being given the termination notice on January 18, 2018 was Plaintiff informed, either orally or in writing, of the nature of the charges that gave rise to his termination.

27. At no time prior to being given the termination notice on January 18, 2018 was Plaintiff presented with an explanation of the employer’s evidence that would sustain his termination.

28. At no time prior to being given the termination notice on January 18, 2018 was Plaintiff afforded a *Loudermill* hearing, thereby constitutionally depriving him of his right to contest the termination and to present evidence contesting the employer’s termination.

29. As a result of the aforesaid actions regarding Plaintiff’s termination, Defendant University of Pittsburgh deprived Plaintiff Rosfeld of his constitutionally protected rights under Section 1 of the 14th Amendment to the Constitution of the

United States which provides that no person shall be deprived of life, liberty, or property without due process of law.

30. As a result of the aforesaid actions regarding Plaintiff's termination, Defendant University of Pittsburgh deprived Plaintiff Rosfeld of his constitutionally protected rights under Article I, Section I of the Constitution of the Commonwealth of Pennsylvania, which provides that men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

31. As a result of the aforesaid actions regarding Plaintiff's termination, Defendant University of Pittsburgh operated in contravention to 42 U.S.C. §1983, which provides that no entity or person, under the color of law, shall deprive a person within its jurisdiction of any right or privilege guaranteed and secured by the Constitution of the United States.

32. As a result of the aforesaid actions regarding Plaintiff's termination, Defendant University of Pittsburgh deprived Plaintiff Rosfeld of his due process rights as set forth in ***Cleveland Board of Education v. Loudermill*** 470 U.S. 532 (1985), which held that a public employee has a property right in his employment, and therefore prior to a termination of employment, must be provided notice of the charges against the employee, and explanation of the employer's evidence, and an opportunity to respond to the charges alleged.

33. As a result of the aforesaid actions regarding Plaintiff's termination, Defendant Loftus deprived Plaintiff Rosfeld of his constitutionally protected rights under Section 1 of the 14th Amendment to the Constitution of the United States which provides that no person shall be deprived of life, liberty, or property without due process of law.

34. As a result of the aforesaid actions regarding Plaintiff's termination, Defendant Loftus deprived Plaintiff Rosfeld of his constitutionally protected rights under Article I, Section I of the Constitution of the Commonwealth of Pennsylvania, which provides that men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

35. As a result of the aforesaid actions regarding Plaintiff's termination, Defendant Loftus operated in contravention to 42 U.S.C. §1983, which provides that no entity or person, under the color of law, shall deprive a person within its jurisdiction of any right or privilege guaranteed and secured by the Constitution of the United States.

36. As a result of the aforesaid actions regarding Plaintiff's termination, Defendant Loftus deprived Plaintiff of his due process rights as set forth in ***Cleveland Board of Education v. Loudermill*** 470 U.S. 532 (1985), which held that a public employee has a property right in his employment, and therefore prior to a termination of employment, must be provided notice of the charges against the employee, and explanation of the employer's evidence, and an opportunity to respond to the charges alleged.

37. It is believed, and therefore averred, that Defendant Humphrey intervened with and acted in concert with Defendant University of Pittsburgh and Defendant Loftus to facilitate the termination of Plaintiff Rosfeld in retaliation for the actions of Plaintiff Rosfeld in effecting the arrest of her son Daniel Humphrey.

38. As a result of her aforesaid actions regarding Plaintiff's termination, Defendant Humphrey deprived Plaintiff Rosfeld of his constitutionally protected rights under Section 1 of the 14th Amendment to the Constitution of the United States which

provides that no person shall be deprived of life, liberty, or property without due process of law.

39. As a result of her aforesaid actions regarding Plaintiff's termination, Defendant Loftus deprived Plaintiff Rosfeld of his constitutionally protected rights under Article I, Section I of the Constitution of the Commonwealth of Pennsylvania, which provides that men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

40. As a result of her aforesaid actions regarding Plaintiff's termination, Defendant Humphrey operated in contravention to 42 U.S.C. §1983, which provides that no entity or person, under the color of law, shall deprive a person within its jurisdiction of any right or privilege guaranteed and secured by the Constitution of the United States.

41. As a result of her aforesaid actions regarding Plaintiff's termination, Defendant Humphrey deprived Plaintiff of his due process rights as set forth in ***Cleveland Board of Education v. Loudermill*** 470 U.S. 532 (1985), which held that a public employee has a property right in his employment, and therefore prior to a termination of employment, must be provided notice of the charges against the employee, and explanation of the employer's evidence, and an opportunity to respond to the charges alleged.

RELIEF REQUESTED

As a result of the foregoing actions by all Defendants in depriving Plaintiff Rosfeld of his due process rights afforded him by the United States Constitution, the Constitution of Pennsylvania, 42 U.S.C. §1983, and *Cleveland Board of Education v. Loudermill*, Plaintiff requests this Honorable Court to:

- A. Direct the Defendant University of Pittsburgh to provide Plaintiff Rosfeld with the due process rights afforded him in *Loudermill* and conduct the appropriate constitutionally mandated proceedings consistent with *Loudermill* ;
- B. Immediately reinstate Plaintiff Rosfeld to his position as a police officer with the Defendant University of Pittsburgh, effective as of January 18, 2018, along with the compensation, benefits, and other emoluments afforded him as a Pitt Police officer, pending a *Loudermill* hearing;
- C. Direct the Defendant University of Pittsburgh to immediately compensate Plaintiff Rosfeld with lost wages and other benefits that would have accrued to Plaintiff Rosfeld from January 18, 2018 to present; and
- D. To grant any additional relief the Court would deem fair, equitable and just.

Respectfully submitted,



Timothy G. Uhrich, Esquire
Pa. I.D. No. 54872

1400 The Allegheny Building
429 Forbes Avenue
Pittsburgh, Pennsylvania 15219
(412) 434-6620

VERIFICATION

Plaintiff Michael H. Rosfeld verifies that the statements made in the within Complaint in Civil Action are true and correct. Plaintiff understands that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.



A handwritten signature in black ink, appearing to read 'Michael H. Rosfeld', is written over a horizontal line.

Michael H. Rosfeld, Plaintiff

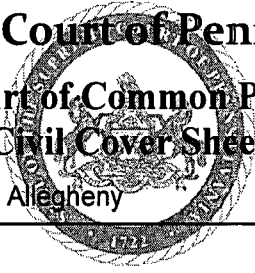
Date: JANUARY 16, 2020

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

Allegheny

County



For Prothonotary Use Only:

Docket No:

60 20 836

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- Complaint Writ of Summons Petition
 Transfer from Another Jurisdiction Declaration of Taking

Lead Plaintiff's Name:
Michael H. Rosfeld

Lead Defendant's Name:
University of Pittsburgh

Are money damages requested? Yes No Dollar Amount Requested: within arbitration limits outside arbitration limits (check one)

Is this a *Class Action Suit*? Yes No Is this an *MDJ Appeal*? Yes No

Name of Plaintiff/Appellant's Attorney: Timothy G. Uhrich, Esquire

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- Intentional
 Malicious Prosecution
 Motor Vehicle
 Nuisance
 Premises Liability
 Product Liability (does not include mass tort)
 Slander/Libel/ Defamation
 Other: _____

CONTRACT (do not include Judgments)

- Buyer Plaintiff
 Debt Collection: Credit Card
 Debt Collection: Other _____
 Employment Dispute: Discrimination
 Employment Dispute: Other
 Loudermill violation by Employer _____
 Other: _____

CIVIL APPEALS

- Administrative Agencies
 Board of Assessment
 Board of Elections
 Dept. of Transportation
 Statutory Appeal: Other _____
 Zoning Board
 Other: _____

MASS TORT

- Asbestos
 Tobacco
 Toxic Tort - DES
 Toxic Tort - Implant
 Toxic Waste
 Other: _____

REAL PROPERTY

- Ejectment
 Eminent Domain/Condemnation
 Ground Rent
 Landlord/Tenant Dispute
 Mortgage Foreclosure: Residential
 Mortgage Foreclosure: Commercial
 Partition
 Quiet Title
 Other: _____

MISCELLANEOUS

- Common Law/Statutory Arbitration
 Declaratory Judgment
 Mandamus
 Non-Domestic Relations Restraining Order
 Quo Warranto
 Replevin
 Other: _____

PROFESSIONAL LIABILITY

- Dental
 Legal
 Medical
 Other Professional: _____