

# Exhibit T

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FILED  
U.S. DISTRICT COURT  
2012 OCT 23 AM 10:14  
S.D. OF N.Y.

-----X  
HASSAN GRAY,

Plaintiff,

**COMPLAINT**

vs.

DOUGLAS ELLIOTT, WAYNE BOOTH,  
SUPERVISOR, TOWN OF NEWBURGH,  
TOWN OF NEWBURGH,

12 CV 7880  
JUDGE STEFF

Defendants.  
-----X

HASSAN GRAY, by and through his attorney, Michael H. Sussman, hereby  
states as and for his Complaint, against defendants:

**A. PARTIES**

1. Plaintiff, Hassan Gray, is an African-American male of legal age who  
resides in this judicial district.

2. Defendant Douglas Elliott is a Caucasian, at all relevant times employed  
as a supervisor in the Town of Newburgh Water Department and, as such,  
plaintiff's superior. He, too, resides in this judicial district.

3. At all relevant times, defendant Elliott's conduct was state action and  
engaged in on behalf of the Town of Newburgh, his employer.

4. At all relevant times, defendant Wayne Booth was the Supervisor of the Town of Newburgh and its chief administrative and executive officer. The acts and omissions of Mr. Booth are, or may be, reflective of final policymaking done by the Town of Newburgh.

5. Defendant Town of Newburgh is a municipal corporation organized pursuant to the laws of the State of New York and it may sue and be sued.

6. Defendant Town is governed by the Town Board which may be the final-decision-maker for the Town when such authority is not vested in the supervisor or delegated by practice to him.

#### **B. JURISDICTION**

7. As plaintiff claims that defendants violated rights provided him by the Equal Protection clause of the Fourteenth Amendment, this Court has jurisdiction pursuant to 28 U.S.C. secs. 1343 (3) & (4) and 42 U.S.C. secs. 1983 and 1988.

#### **C. FACTUAL ALLEGATIONS**

8. On April 13, 2006, plaintiff commenced employment as a laborer with the Town of Newburgh Water Department.

9. On or about August 2008, defendant Town promoted plaintiff to the position of Maintenance Worker.

10. At all relevant times, defendant Elliott served as foreman of the water department's work force and functioned as plaintiff's supervisor.

11. During plaintiff's employment with the Town, he has been the sole African-American employed by and with the Town's Water Department.

12. Indeed, of about 150 municipal employees in the Town, in which African-Americans comprise at least 15% of the population, four employees are African-American.

13. Upon information and belief, this low proportion of African-American employees represents the result of a conscious municipal policy, implemented by defendant Booth and the defendant Town during his and prior administrations, not to hire African-Americans to town positions and, instead, to hire in a manner marked by nepotism and favoritism which favors Caucasians related to those already employed or politically active in the Town of Newburgh.

14. Defendant Elliott runs the water department on a day-to-day basis, providing workers assignments and maintaining records which are used as a basis for discipline against employees.

15. Throughout plaintiff's employment, defendant Elliott has treated him differently than he treated similarly-situated Caucasian employees.

16. Amongst the ways defendant Elliott has treated plaintiff differently during the last three years are the following:

a) he left plaintiff's name off of daily assignment sheets leaving plaintiff without an assignment and suggesting that plaintiff was incapable of doing the work required of his position;

b) he assigned plaintiff to menial jobs which should have been performed by persons in the laborer classification [as opposed to "Maintenance Worker"];

c) he forced plaintiff to remain outside in the cold while allowing otherwise similarly-situated Caucasian workers to remain in their heated trucks;

d) he entered false statements about plaintiff's job performance and used these as the basis for written discipline.

17. In October 2010, several of plaintiff's co-workers advised him that defendant Elliott had been overheard repeatedly referring to him as a "nigger" and a "lazy nigger."

18. Specifically, one co-worker reported that in the summer/fall of 2010, he overheard defendant Elliott speaking with DePew, the Assistant Highway Superintendent, as follows:

Mr. Depew: "What's the matter, your nigger giving you trouble?"

Mr. Elliott: "I hate the fucking nigger."

Mr. DePew: "These people are like that, you have to make them do what you want to do."

19. Plaintiff's co-worker also overheard Elliott and/or DePew, in Elliott's presence, refer to plaintiff as an "uppity nigger", as a "slave", remark about his odor and the smell and looks of all African-Americans, call him a "monkey" and a "nigger."

20. During the same time period, a co-worker advised plaintiff that Elliott was conferring with the Assistant Highway Superintendent about how to get him fired.

21. On November 9, 2010, the Deputy Supervisor of the Town of Newburgh, another member of the Town of Newburgh Town Board and the Town's personnel officer directed that plaintiff attend a meeting at Town Hall.

22. At this time, the Deputy Supervisor reviewed alleged infractions plaintiff had committed, though he refused to show plaintiff any documents or notes relating to these alleged incidents.

23. Contrary to the Town's collective bargaining agreement, defendant Town failed to afford plaintiff with union representation during this pre-disciplinary meeting.

24. At the end of this meeting, the Deputy Supervisor provided plaintiff with a vague “counseling memorandum,” which failed to provide any specific dates or details of plaintiff’s alleged infractions.

25. On November 22, 2010, plaintiff complained to the Town’s personnel officer that the motivation for the November 9, 2010 meeting was racial bias.

26. Plaintiff received no response to his November 22, 2010 complaint.

27. About five weeks after filing this complaint with the personnel officer, plaintiff asked the Deputy Supervisor to address it.

28. The Deputy Supervisor spoke with defendant Elliott and declined to address plaintiff’s complaint.

29. On December 29, 2010, plaintiff filed a complaint of harassment and discrimination against Elliott with the Town of Newburgh Police Department.

30. On January 6, 2011, the Town Supervisor, the Deputy Supervisor, the personnel officer, the CSEA President and business agent met with plaintiff and defendant Elliott.

31. At this meeting, the Deputy Supervisor asked plaintiff whether he was “anti-white” and the Supervisor criticized plaintiff for not adhering to the Town’s anti-discrimination policy when he filed a complaint with the police department.

32. Following this meeting, the Town appointed an outside attorney to investigate plaintiff's complaints of racial discrimination.

33. Plaintiff fully cooperated with this investigation.

34. Despite the serious allegations made against defendant Elliott, defendants Booth and the Town continued to allow Elliott to act as plaintiff's supervisor through September 2011.

35. During this time period, having been informed that defendant Elliott often referred to plaintiff as a "nigger" and having been the subject of false accusations which plaintiff knew his supervisor had initiated, plaintiff felt stress and anxiety on a daily basis, reasonably experienced his work place as hostile and had difficulties carrying out the elements of his job duties.

36. On September 16, 2011, the investigator hired by the Town of Newburgh concluded an investigation during which he interviewed twenty six individuals and reviewed numerous documents.

37. The Town's investigator concluded that "There is sufficient evidence that Mr. Elliott subjected Complainant to a hostile work environment on the basis of his race when he made racially biased remarks about Complainant."



38. The Town's investigator also concluded, "There is sufficient evidence that Mr. Elliott singled Complainant out on the basis of his race when he not only documented Complainant's performance but also incorrectly alleged that Complainant failed to perform, or incorrectly perform [sic], assignments, as he had previously referred to Complainant as a "nigger", stated that [he] hated the "fucking nigger" and repeatedly stated that he had to get rid of him (referring to Complainant)."

39. Following the conclusion of this investigation, defendant Town suspended defendant Elliott with pay.

40. Thereafter, defendant Town commenced a section 75 disciplinary hearing against defendant Elliott.

41. However, at such hearing, the Town, through its counsel, failed to call numerous witnesses identified in the investigator's report whose testimony would either have established that defendant Elliott engaged in discriminatory conduct [which he had denied] or was otherwise not credible.

42. Defendant Town intentionally failed to properly prosecute the disciplinary case against defendant Elliott.

43. In addition, despite sufficient evidence that Depew had engaged in discriminatory conduct at clear variance with the policies of defendant Town, the

defendant Town has neither charged nor subjected him to a disciplinary hearing concerning these matters.

44. Between November 1, 2009 and September 16, 2011, defendant Elliott subjected plaintiff to a hostile work environment.

45. During the period between November 22, 2010 and September 16, 2011, defendant Town had knowledge, or should have had known, of the hostile work environment to which defendant Elliott had subjected plaintiff and took insufficient timely remedial action to remedy this hostile environment.

46. As a consequence of his exposure to this hostile work environment which began in 2008 and continues to this day, plaintiff has suffered substantial emotional distress, humiliation and anxiety.

#### **D. CAUSES OF ACTION**

47. Plaintiff incorporates paras. 1-46, as if fully re-written herein.

48. By subjecting plaintiff to a hostile work environment on the basis of his race, defendant Elliott violated the equal protection clause of the Fourteenth Amendment, as made actionable against him by 42 U.S.C. sec. 1983.

49. By and through the conduct of plaintiff's supervisor, defendant Town of Newburgh subjected plaintiff to a hostile work environment on the basis of his race

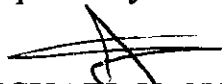
in violation of the equal protection clause of the Fourteenth Amendment, as made actionable as to it by 42 U.S.C. sec. 1983.

50. By failing to timely intervene and prevent the hostile work environment to which their agent, Elliott, and they subjected plaintiff, defendants Booth and the Town of Newburgh subjected plaintiff to a hostile work environment on the basis of his race in violation of the equal protection clause of the Fourteenth Amendment, as made actionable as to it by 42 U.S.C. sec. 1983.

**E. PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays that this Honorable Court: accept jurisdiction over this manner, empanel a jury to hear and decide all issues within its authority, award to plaintiff compensatory damages against defendants with pre- and post-judgment interest; award to plaintiff and against defendant Elliott punitive damages with pre- and post-judgment interest; enjoin defendants, their assigns, successors in office and those acting in concert with them from engaging in racial discrimination or retaliation; award to plaintiff the reasonable attorneys' fees and costs arising from his prosecution of this matter and enter any other relief which the interests of justice and equity require.

Respectfully submitted,



MICHAEL H. SUSSMAN [3497]

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Counsel for plaintiff

Dated: October 23, 2012