

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO**

UNITED STATES OF AMERICA,)	CASE NO. 1:07CV1541
)	
Plaintiff,)	JUDGE NUGENT
)	
v.)	MAGISTRATE McHARGH
)	
THE VILLAGE OF WOODMERE, OHIO)	DEFENDANT VILLAGE OF
)	WOODMERE'S ANSWER TO
Defendant.)	COMPLAINT
)	

Defendant The Village of Woodmere, Ohio, for its Answer to Plaintiff's Complaint, admits, denies and avers as follows:

1. Admits the action is brought by the United States pursuant to Title VII, but denies to the extent the "enforcement" action has any validity.
2. As to timely filed claims, admits; otherwise, as to untimely claims, denied.
3. Defendant Village of Woodmere admits that it is a municipal corporation and political subdivision which operates under the Home Rule authority granted by the Ohio Constitution and pursuant to the Village's Charter. The remainder of Complaint ¶ 3 is denied for want of specificity.
4. Admits.
5. Admits that Amy Mengay was a former officer in the Village's Police Department who was lawfully terminated, but denies the remaining allegations, each and every, all and singular, contained in Complaint ¶ 5.

6. Admits that Timothy Ellis was a former officer in the Village's Police Department who was lawfully terminated, but denies the remaining allegations, each and every, all and singular, contained in Complaint ¶ 6.
7. Admits that Mengay filed a charge of discrimination with the EEOC, but denies the remaining allegations contained in Complaint ¶ 7.
8. Admits that Ellis filed a charge of race discrimination with the EEOC, but denies the remaining allegations contained in Complaint ¶ 8.
9. Admits that the EEOC's conciliation efforts were unsuccessful and that the matter was subsequently referred to the Department of Justice, but denies the remaining allegations contained in Complaint ¶ 9.
10. Denies the allegations contained in Complaint ¶ 10.

AFFIRMATIVE DEFENSES

1. The claims are subject to the "same actor" defense in that the employees were appointed and discharged by the same person.
2. Both Ellis and Mengay were probationary employees who did not have a property right to continued employment as neither had satisfactorily completed their probationary periods.
3. *Res judicata*, claim/issue preclusion, and merger bar.
4. To demonstrate that the alleged comparators were similarly-situated in all material respects, the Plaintiff must demonstrate, *inter alia*, that the same decisionmaker made the employment decision, but also that the employment of the alleged comparators was probationary in nature.

5. There were legitimate non-discriminatory reasons for the termination of Ellis and Mengay.
6. Statute of limitation operates to bar some or all of the claims.
7. Plaintiff has failed to state a facially neutral employment practice or allege a pattern of discriminatory decisionmaking necessary for a disparate impact claim, but rather only individual decisions which are unique to each employee's circumstances.
8. Failure to mitigate.

Respectf

ully submitted,

s/ John D. Latchney

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Village of Woodmere, Ohio

JURY DEMAND

Defendant The Village of Woodmere, Ohio hereby demands a jury trial.

s/

John D. Latchney

JOHN

D. LATCHNEY (0046539)
TOMINO & LATCHNEY, LLC, LPA

CERTIFICATE OF SERVICE

A copy of Defendant Village of Woodmere's Answer to Complaint was served via the Court's Electronic Filing System on this 26th day of June 2007 upon:

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s/

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