

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

TIMOTHY ELLIS	)	CASE NO. 1:07-CV-1541
	)	
Plaintiff,	)	JUDGE DONALD C. NUGENT
	)	
v.	)	
	)	<b>ANSWER OF DEFENDANTS</b>
THE VILLAGE OF WOODMERE,	)	<b>TO COMPLAINT OF TIMOTHY J. ELLIS</b>
OHIO, et al.	)	
	)	(JURY DEMAND)
Defendants.	)	

Defendants, for their Answer to Plaintiff's Complaint, admit, deny and aver as follows:

1. Deny the allegations contained in Paragraph 1.
2. Deny the allegations contained in Paragraph 2.
3. Deny the allegations contained in Paragraph 3.
4. Deny the allegations contained in Paragraph 4.
5. Admit that Plaintiff, Timothy J. Ellis, is a white citizen of the United States, but deny the remaining allegations contained in Paragraph 5.
6. Deny the allegations contained in Paragraph 6.
7. Deny the allegations contained in Paragraph 7.
8. Deny the allegations contained in Paragraph 8.
9. Reaffirm their previous admissions and denials in response to Paragraph 9.

10. Admit that in March of 2003, Plaintiff Ellis was hired as a part-time police officer for the Village of Woodmere, but deny the remaining allegations contained in Paragraph 10.
11. In response to Complaint Paragraph 11, admit that Plaintiff Ellis was appointed as a full-time probationary police officer for the Village of Woodmere, but deny the remaining allegations contained in Paragraph 11.
12. Admit that on October 7, 2004, Defendant Broadie identified a citizen complaint regarding excessive use of force, a reprimand and discourtesies toward Defendants Patrick and Broadie as legitimate non-discriminatory reasons to terminate the probationary employment of Plaintiff, but deny the remaining allegations contained in Paragraph 12.
13. Deny the allegations contained in Paragraph 13.
14. Deny the allegations contained in Paragraph 14.
15. Admit Defendant Broadie, in her official capacity as Safety Director or Mayor of Defendant Village of Woodmere, fired the Plaintiff, but deny the remaining allegations contained in Paragraph 15.
16. Deny the allegations contained in Paragraph 16.
17. Deny the allegations contained in Paragraph 17.
18. Deny the allegations contained in Paragraph 18.
19. Admit Defendant Broadie, in her official position as the City's Safety Director or Mayor, fired Plaintiff, but deny the remaining allegations contained in Paragraph 19.
20. Deny the allegations contained in Paragraph 20.
21. Deny the allegations contained in Paragraph 21.
22. Deny the allegations contained in Paragraph 22.
23. Deny the allegations contained in Paragraph 23.

24. Deny the allegations contained in Paragraph 24.
25. Admit Defendant Broadie promoted Officer Brown, but deny the remaining allegations contained in Paragraph 25.
26. Deny the allegations contained in Paragraph 26.
27. Deny the allegations contained in Paragraph 27.
28. Deny the allegations contained in Paragraph 28.
29. Deny the allegations contained in Paragraph 29.
30. Deny the allegations contained in Paragraph 30.
31. Deny the allegations contained in Paragraph 31.
32. Deny the allegations contained in Paragraph 32.
33. Reaffirm their previous admissions and denials in response to Paragraph 33.
34. Deny the allegations contained in Paragraph 34.
35. Deny the allegations contained in Paragraph 35.
36. Deny the allegations contained in Paragraph 36.
37. Deny the allegations contained in Paragraph 37.

#### **AFFIRMATIVE DEFENSES**

1. Judicial and/or quasi-judicial immunity for the individually named Council members.
2. Qualified immunity.
3. Individuals cannot be liable under Title VII.
4. *Res judicata*, claim/issue preclusion, and merger bar.
5. Statute of limitation operates to bar some or all of the claims.
6. 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.

7. The claims are subject to the “same actor” defense in that the employees were appointed and discharged by the same person.
8. 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.
9. There were legitimate non-discriminatory reasons for the termination of Ellis and Mengay.
10. 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.
11. Failure to mitigate.
12. Failure to plead the inadequacy of state remedies.
13. Failure to exhaust state remedies.

Respectf

ully submitted,

*s/ John D. Latchney*

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John  
TO

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D. Latchney (0046539)  
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*Attorney for Defendants*

**JURY DEMAND**

Defendants hereby demand a jury trial.

*s/ John D. Latchney*

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John  
TO

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D. Latchney (0046539)  
MINO & LATCHNEY, LLC, LPA

**CERTIFICATE OF SERVICE**

A copy of the foregoing Answer of Defendants was served upon counsel for Plaintiff via the Court's ECF System on this 10<sup>th</sup> day of September 2007.

*s/ John D. Latchney*

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John  
TO

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D. Latchney (0046539)  
MINO & LATCHNEY, LLC, LPA