



City of Chattanooga

Office of the City Attorney

FILE COPY

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September 1, 2011

VIA US MAIL AND FACSIMILE

Robert Trail, Federal Investigator
United States Equal Employment Opportunity Commission
50 Vantage Way, Ste. 202
Nashville, TN 37228

Re: *EEOC Charge No.: 494-2009-01391* - [REDACTED]

Dear Mr. Trail:

This letter is sent to follow up on your Agency's investigation of the above noted charge and letter sent to the City of Chattanooga on September 10, 2010. Enclosed you will find an Affidavit of Paul Page. Mr. Page was not interviewed, but remains available, during the investigation.

The City submits that a more detailed analysis of the time frame should be considered by your Agency. A review of Bates Stamped Nos. 182 and 183 previously submitted to your Agency indicates that the Charging Party refers to conduct that occurred prior to December 4, 2008. Mr. Page's Affidavit, Paragraph 9, Bates Stamped No. 185, indicates Mr. Page concluded the training for alleged sexual harassment prevention on December 8, 2008.

The Charging Party does not refer to any other instances of alleged harassment by Mr. Page after December 8, 2008. It appears the City's policy resulted in a termination of any further alleged sexual harassment conduct by Mr. Page.

The Charging Party states in her charge to your Agency that she was allegedly "sexually harassed" by Mr. Page "on or around January 15, 2009." Mr. Page's Affidavit shows that he did not have any such contact with the charging Party after December 2008.

Ltr. to Robert Trail
Thursday, September 1, 2011
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The Charging Party further states in her charge that the Mayor withdrew support for the wellness programs since she and other workers alleged Mr. Page had engaged in conduct of sexual harassment. The City submits that no evidence has been adduced to support this charge. That is, the Charging Party was not identified as a witness or a victim in the investigation about alleged sexual harassment by Mr. Page prior to December 8, 2008. Please see the investigative report submitted to your Agency as Bates Stamped Nos. 92-130.


The Charging Party was employed exclusively on a temporary basis. The Charging Party knew her employment in that capacity could not exceed a period of six (6) months.

Although the Charging Party may have you believe she suffered wrongly or was a victim of some malfeasance by the City, the City has proffered records to show that the Charging Party's class was canceled in February 2009 because of a requirement that each class must have five (5) participants. Cancellation of the Charging Party's class due to lack of attendance had absolutely nothing to do with an omnibus complaint by the Charging Party.

The City submits that the Charging Party should present evidence that this legitimate reason for terminating her class was pretext. That is, can the Charging Party identify any other classes that were allowed to continue with fewer than (5) participants?

The City has a well-established policy in place for harassment prevention and employees/supervisors are trained regularly. The Charging Party knew or should have known how to properly access the harassment prevention policy. The Charging Party could have approached any supervisor, manager or elected official to file a complaint or she would have been counseled and directed how to appropriately file with her complaint.

The City understands the posture of your Agency as you indicated in a telephone call to this office. The City remains amenable to an informal resolution of this charge if a reasonable agreement could be reached. If you have any questions, or need additional information or documents, please let me know.

Sincerely,

KENNETH O. FRITZ
Assistant City Attorney

KOF: ccw

e-cc: Donna Kelley

Affidavit Submitted in Response to EEOC

CHARGING PARTY: [REDACTED]
Respondent: CITY OF CHATTANOOGA
EEOC Charge NO.: 494-2009-01391

AFFIDAVIT OF PAUL PAGE

STATE OF TENNESSEE)
COUNTY OF HAMILTON)

I, Paul Page, having first been duly sworn, state upon personal knowledge as follows:

1. I am presently employed as Director of the Department of General Services (General Services).
2. The duties and responsibilities of General Services include managing the City's real property. The City's WellAdvantage Fitness Center and programs are under the direction of the Department of Personnel.
3. I did not did not supervise or have any management authority over the Charging Party [REDACTED]. I did not have any management duties related to the WellAdvantage Fitness Center program except for building maintenance. I did not have any contact with the Charging Party except as stated in this Affidavit.
4. I did not have any contact with the Charging Party except as stated in this Affidavit. I did not sexually harass the Charging Party.

5. The only personal contact that I had with the Charging Party was on a day when I was at the wellness center to train on exercise equipment. The Charging Party helped me with the exercise equipment and asked if I would take an exercise training class she taught. I told the Charging Party I would not be able to take the class.

5. I have been in the building where the wellness programs are conducted for work related matters. I was Director of General Services when the building was renovated for its current use.
6. The air conditioning unit broke down in the building. I went to building were the wellness programs are conducted with prospective bidders and ultimately with the contractor selected to repair the air conditioning unit. I did not have any personal contact with the Charging Party when the air conditioning unit was repaired.
7. I am familiar with the design and layout of the building where the City's wellness programs are provided.
8. I have not looked or "leered" at the charging party while she conducted a "personal training class" class on City property. I did not attempt to block the charging party with my motor vehicle at any time.
9. A charge of alleged sexual harassment was investigated by the Department of Personnel regarding conduct that I allegedly engaged in 2007. As a result of that investigation, I was required to attend training on discrimination and harassment prevention (Bates Stamped No. 185).
10. I was humiliated and embarrassed by the investigation of alleged sexual harassment based on my interactions with co-workers. I have conducted myself in conformity with the City's personnel policies at all times during my employment with the City. In particular, I have specifically and intentionally avoided situations described by the Charging Party in her charge to the Equal Employment Opportunity Commission (EEOC) since December

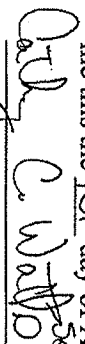
8, 2008. In particular, I did not have any contact with the Charging Party on or around January 19, 2009.

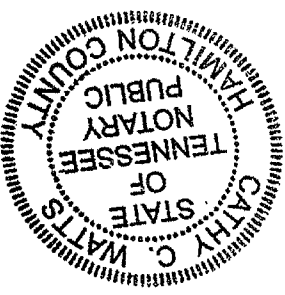
11. I was scheduled to interview with the EEOC Investigator on August 3, 2010. However, I had emergency eye surgery and was out of the office on August 3, 2010. I was not able to meet with the EEOC Investigator on August 3, 2010. The EEOC Investigator has not contacted the City to re-schedule an interview.

FURTHER AFFIANT SAITH NOT.


PAUL PAGE

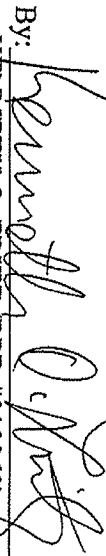
SWORN TO AND SUBSCRIBED before
me this the 1st day of August, 2011.


NOTARY PUBLIC AT LARGE
My Commission Expires: 4/10/13



Respectfully submitted,

CITY OF CHATTANOOGA, TENNESSEE
MICHAEL A. MCMAHAN, CITY ATTORNEY

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