

COMMONWEALTH OF MASSACHUSETTS

DUKES, ss.

**SUPERIOR COURT
DOCKET NO. 2274CV00002**

DANIELLE CLERMONT,)
 Plaintiff)
)
v.)
)
TOWN OF TISBURY and SGT. MAX)
SHERMAN, in his Official and)
Individual Capacities,)
 Defendants.)

**ANSWER, AFFIRMATIVE DEFENSES, AND CLAIM FOR JURY TRIAL OF
DEFENDANTS TOWN OF TISBURY AND MAX SHERMAN**

ANSWER

INTRODUCTION

Defendants state that this Paragraph of Plaintiff’s Complaint purports to characterize the nature of this action and therefore no response is required. To the extent that a response is required, Defendants deny the allegations of this Paragraph.

PARTIES

1. Defendants cannot admit or deny the allegations of this Paragraph and call upon Plaintiff to prove the same.
2. Admit.
3. Admit.

FACTS

4. Defendants cannot admit or deny the remaining allegations of this Paragraph and call upon Plaintiff to prove the same.
5. Defendants cannot admit or deny the allegations of this Paragraph and call upon Plaintiff to prove the same.
6. Admit.

7. Defendants cannot admit or deny the allegations of this Paragraph and call upon Plaintiff to prove the same.
8. Admit. In further Answering, Defendants state that Plaintiff was a “self-sponsor” to the Police Academy, such that she was personally responsible for all costs associated with the Academy.
9. Defendants cannot admit or deny the allegations of this Paragraph and call upon Plaintiff to prove the same.
10. Defendants cannot admit or deny the allegations of this Paragraph and call upon Plaintiff to prove the same.
11. Defendants cannot admit or deny the allegations of this Paragraph as to when Plaintiff began a dating relationship with Ms. Roman and call upon Plaintiff to prove the same. Defendants admit that Ms. Roman was previously employed as a Sergeant within the Tisbury Police Department.
12. Defendants cannot admit or deny the allegations of this Paragraph and call upon Plaintiff to prove the same.
13. Defendants cannot admit or deny the allegations of this Paragraph and call upon Plaintiff to prove the same.
14. Defendants cannot admit or deny the allegations of this Paragraph and call upon Plaintiff to prove the same.
15. Defendants admit that Plaintiff applied for a position with the Tisbury Police Department. Defendants cannot admit or deny the remaining allegations of this Paragraph and call upon Plaintiff to prove the same.
16. Defendants admit that on June 4, 2017, Plaintiff interviewed for a police officer position with the interview board, which then sought a conditional offer of employment for Plaintiff from the Tisbury Board of Selectmen. In further answering, Defendants state that the Board of Selectmen must approve and finalize all officer hires, and that all offers of employment are conditional so that the Town can conduct background checks and that all candidates must pass a physical and psychological test. Defendants cannot admit or deny the remaining allegations of this Paragraph and call upon Plaintiff to prove the same.
17. Defendants admit that on June 4, 2017, Plaintiff interviewed for a police officer position with the interview board, which then sought a conditional offer of employment for Plaintiff from the Tisbury Board of Selectmen. Defendants cannot admit or deny the remaining allegations of this Paragraph and call upon Plaintiff to prove the same.

18. Defendants cannot admit or deny whether the allegations of this Paragraph are “important to note” and call upon Plaintiff to prove the same.
19. Admit.
20. Defendants cannot admit or deny the allegations of this Paragraph and call upon Plaintiff to prove the same.
21. Deny.
22. Deny.
23. Defendants state that the allegations of this Paragraph refer to a document that speaks for itself and therefore no further response is required.
24. Defendants cannot admit or deny the allegations of this Paragraph as to what Plaintiff told her family and friends and call upon Plaintiff to prove the same. Defendants deny the allegation that Plaintiff was given an offer of employment.
25. Deny.
26. Deny.
27. Deny.
28. Deny.
29. Deny.
30. Deny.
31. Admit, as Defendants have no knowledge of any so-called “negative” letter.
32. Deny.
33. Admit.
34. Admit.
35. Deny.
36. Deny.
37. Deny.
38. Admit.

39. Deny.
40. Admit.
41. Upon information and belief Defendants admit that Plaintiff became employed with the Westwood Police Department. Defendants cannot admit or deny the remaining allegations of this Paragraph and call upon Plaintiff to prove the same.
42. Deny.
43. Defendants cannot admit or deny the allegation as to what Chief Silva said in December of 2020 as alleged in this Paragraph, and call upon Plaintiff to prove the same. Defendants deny that anyone from the Tisbury Police Department made such a call.
44. Deny.
45. Deny.
46. Deny.
47. Deny.
48. Defendants admit that no “internal affairs investigation” was conducted as a result of the newspaper article referenced in this Paragraph, the content of which Defendants deny.
49. Defendants admit that Plaintiff’s counsel filed a FOIA request. Defendants deny having any knowledge of an alleged “negative” letter.
50. Admit, as Defendants have no knowledge of this alleged letter.
51. Deny.
52. Deny.

COUNT I
INTENTIONAL, IMPROPER INTERFERENCE WITH ADVANTAGEOUS BUSINESS
RELATIONSHIP
v. Defendant Max Sherman

53. Defendants repeat and incorporate by reference herein their responses to Paragraphs 1 through 52 above as if set forth in full.
54. Deny.
55. Deny.

56. Deny.

COUNT II
CONSPIRACY

v. Defendant Max Sherman and Defendant Town of Tisbury

57. Defendants repeat and incorporate by reference herein their responses to Paragraphs 1 through 56 above as if set forth in full.

58. Deny.

59. Deny.

COUNT III
SLANDER

v. Defendant Max Sherman

60. Defendants repeat and incorporate by reference herein their responses to Paragraphs 1 through 59 above as if set forth in full.

61. Deny.

62. Deny.

63. Deny.

COUNT IV

Failure to Properly Train and Supervise
Defendant Town of Tisbury

64. Defendants repeat and incorporate by reference herein their responses to Paragraphs 1 through 63 above as if set forth in full.

65. Deny.

AFFIRMATIVE DEFENSES

1. Defendants state that the Plaintiff's Complaint fails to state a claim upon which relief can be granted and should therefore be dismissed pursuant to Mass. R. Civ. P. 12(b)(6).

2. Defendants state that damages alleged in Plaintiff's Complaint were caused in whole or in part by the actions of a third party or third parties for whom they are not responsible.
3. Defendants state that the claims set forth in Plaintiff's Complaint are barred by the statutes of limitations thereto applicable.
4. Defendants state that the Plaintiff's claims are barred by the doctrines of waiver, estoppel, laches, and/or unclean hands.
5. Defendants state that they were justified in their actions and conduct, and are therefore not liable to the Plaintiff.
6. Defendants state that their actions were performed according to, and protected by law and/or legal process, and the Plaintiff is barred from recovery hereunder.
7. Defendants, while denying that the acts were committed as alleged in the Plaintiff's Complaint, state that at all times material hereto they acted in good faith and a reasonable belief that their actions were in compliance with all relevant laws and circumstances.
8. Defendants state that their actions, at all times, were justified, necessary, carried out in good faith and with sufficient legal cause, and in conformity with settled principles of law.
9. Defendants state that the Plaintiff has failed to mitigate her damages, if any.
10. Defendants state that the Plaintiff's claims are barred because Defendants did not have knowledge of a business relationship, or expected relationship, between the Plaintiff and another party.
11. Defendants state that the Plaintiffs claims are barred because they did not act with improper actual malice that was unrelated to a legitimate municipal interest.
12. Defendants state that the Plaintiffs claims are barred, because she cannot establish a link between any alleged failure to supervise and the actions of any Town employee.
13. Defendants state that their actions were justified by legitimate, bona fide interests.
14. Defendants state that their actions were not arbitrary, irrational or unreasonable, and therefore Plaintiff's claims must fail.
15. Defendants state that the Plaintiff has not set forth an actionable claim against for the imposition of individual liability upon Max Sherman.

16. Defendants hereby put the Plaintiff on notice that they intend to rely upon such further defenses as are developed during the course of discovery and reserve the right to amend this Answer accordingly.

CLAIM FOR JURY TRIAL

Defendants, Town of Tisbury and Max Sherman, hereby claim a trial by jury as to all issues so triable in accordance with Mass. R. Civ. P. 38.

Defendants, Town of Tisbury and Max
Sherman,
by their attorney:

/s/ James T. Scamby

James T. Scamby (BBO #629144)
jscamby@melicklaw.com
MELICK & PORTER, LLP
One Liberty Square
Boston, MA 02109
(617) 523-6200

Dated: June 27, 2022

CERTIFICATE OF SERVICE.

I, James T. Scamby, hereby certify that I have, on this 27th day of June 2022, served a true and accurate copy of the above document via www.efileMA.com and/or e-mail, upon the following:

Jared Burke, Esq., BBO# 677851
Timothy M. Burke, Esq., BBO# 065720
Law Offices of Timothy M. Burke
117 Kendrick Street, Suite 300
Needham Heights, MA 02494
burkejared@gmail.com
tburke@timburkelaw.com

James T. Scamby, Esq
James T. Scamby