

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

----- X

ANTONIO TOMAHAWK,

Index No.

Plaintiff,

COMPLAINT

-against-

**207-215 W. 98TH STREET CONDOMINIUM, Donald
Watnick, President; AKAM ASSOCIATES, INC.;
ED BENJAMIN; and OWEN RODGERS,**

Defendants.

----- X

Antonio Tomahawk, complaining of Defendants, alleges as follows:

INTRODUCTION

1. This is an action for employment discrimination brought by a person of Native American heritage. Plaintiff, a porter at 215 W. 98th Street in Manhattan, was subjected to years of abuse from the building’s Superintendent, often laced with epithets concerning Plaintiff’s ethnic background.

PARTIES

2. Plaintiff Antonio Tomahawk is a Native American and Hispanic man with a disability who engaged in protected activity. His address is 5821 43rd Avenue, Apt. 9B, Woodside, New York 11377.

3. Defendant 207-215 W. 98th Street Condominium (“Owner”) owns and/or operates a condominium apartment building at 215 W. 98th Street, New York, NY 10025 (the “Worksite”) and is an employer as defined by Section 8-102 of the Administrative Code of the

City of New York (the “Code”). Donald Watnick is its President. Its business address is c/o AKAM Associates, Inc., 260 Madison Avenue, 12th Floor, New York, New York 10016.

4. Defendant AKAM Associates, Inc. (“AKAM”) manages and/or operates the Worksite for Defendant Owner and is an employer as defined by Section 8-102 of the Code and is an agent of the employer/Owner. Its address is 260 Madison Avenue, 12th Floor, New York, New York 10016.

5. Defendant AKAM employs Defendant Ed Benjamin (“Benjamin”) as Directing Manager. His business address is c/o AKAM Associates, Inc., 260 Madison Avenue, 12th Floor, New York, New York 10016.

6. Defendant Owner employs Defendant Owen Rodgers (“Rodgers”) as a Superintendent at the Worksite. His business address is c/o AKAM Associates, Inc., 260 Madison Avenue, 12th Floor, New York, New York 10016.

7. Defendants Owner and AKAM jointly supervise both Plaintiff and Defendant Rodgers at the Worksite.

8. In or about June 2011, Defendants hired Plaintiff as a porter and later employed him as a doorman. Plaintiff worked the 10 p.m. to 6 a.m. shift, Tuesdays through Saturdays. Plaintiff had custody of his daughter from Saturdays at 8 p.m. to Sundays at 8 p.m.

9. Throughout Plaintiff’s employment with Defendants, Defendant Rodgers subjected Plaintiff to a work environment saturated with regular and ongoing expressions of hostility, insult, and ridicule on the basis of his race and/or national origin. Defendant Rodgers regularly made derogatory comments to Plaintiff such as “fucking Indian,” “is my apartment bigger than your reservation,” “it’s never been this hot in your teepee,” “go see your medicine

man,” “is it warm in the teepees,” “I’m the chief of this tribe,” “fucking smart ass Indian, a fucking wise guy.”

10. On or about February 25, 2014, Defendant Rodgers changed Plaintiff’s work schedule and required him to work 10 p.m. to 6 a.m., Thursdays through Mondays. The new schedule subjected Plaintiff to extreme sleep deprivation because he was required to work until 6 a.m. Sunday morning, then go home to his daughter and stay awake with her for court-ordered custody until returning to work on at 8 p.m. Rodgers changed Plaintiff’s schedule despite pleas from Plaintiff that it would cause him injury and a new employee would be hired two weeks later who could work the shift.

11. Shortly thereafter, the new work schedule and resulting sleep deprivation began to have an adverse effect on Plaintiff’s, health causing him to experience severe headaches, numbness in an extremity, weight loss, dizziness, and chest pains. Plaintiff did not experience these symptoms prior to the schedule change. Plaintiff was diagnosed with a physical or medical impairment.

12. Plaintiff told Defendant Rogers that the new work schedule was having a negative effect on his health and made numerous requests to be returned to his old schedule as an accommodation for his medical condition. Defendants did not consider or grant Plaintiff’s ongoing requests for accommodation. Despite the impact of the shift, Plaintiff did not take leave from the job.

13. On or about April 12, 2015, Plaintiff wrote a letter to Defendant Owner and the tenants of the building complaining to them, *inter alia*, that he had been diagnosed with a medical condition, that the schedule change was having a negative effect on his health, and

requesting that he be returned to his old work schedule. He further complained about the Superintendent's failure to accommodate another employee, named William Good.

14. On or about April 24, 2015, Defendant Benjamin told Plaintiff, in sum and substance, that he was being suspended indefinitely without pay because of the ailments described in Plaintiff's letter and that he would need a doctor's note to return to work.

15. Subsequently, after filing a union grievance, a NYC Commission on Human Rights Complaint, and several NLRB charges, and advising defendants that he was physically capable of resuming work with accommodations (letters sent on May 28, 2015 and July 6, 2015), defendants allowed Plaintiff to resume work on November 19, 2015.

16. Plaintiff's return to work, however, was on the same schedule he objected to. In fact, at all times, Plaintiff had union seniority sufficient to bump (i.e., replace) other employees doing day shift work.

17. Plaintiff incorporates by reference each and every allegation in the causes of actions set out below.

**AS AND FOR A FIRST
CAUSE OF ACTION**

18. Plaintiff charges that Defendants have discriminated against him in the terms, conditions, and privileges of his employment by subjecting him to a hostile work environment on the basis of his race and/or national origin in violation of Section 8-107(1) of the Code, and have injured him thereby.

**AS AND FOR A SECOND
CAUSE OF ACTION**

19. Plaintiff charges that Defendants have discriminated against him in the terms, conditions, and privileges of his employment on the basis of his disability by failing to consider

his accommodation request, failing to accommodate his disability, and terminating and/or constructively terminating his employment because of an actual and/or perceived disability in violation of Sections 8-107(1) and 8-107(15) of the Code, and have injured him thereby.

**AS AND FOR A THIRD
CAUSE OF ACTION**

20. Plaintiff charges that Defendants have discriminated against him in the terms, conditions, and privileges of his employment in retaliation for engaging in protected activity by terminating or constructively terminating his employment in violation of Section 8-1 07(7) of the Code and have injured him thereby.

DAMAGES

21. As a consequence of Defendants' unlawful actions:
- a. Plaintiff has suffered a loss of pay and benefits.
 - b. Plaintiff has suffered emotional distress, to his injury in the sum of \$500,000.
 - c. Plaintiff has suffered physical injury, to his damage in the sum of \$500,000.

22. Defendants have acted intentionally and maliciously and/or in reckless disregard of Plaintiff's rights, entitling Plaintiff to an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter judgment:

- a. Directing Defendants to reasonably accommodate Plaintiff's disabilities;
- b. Awarding Plaintiff against Defendants jointly and severally:
 - i. back pay and compensation for benefits lost,

- ii. compensatory damages in the amount of \$1 million, and
 - iii. punitive damages in the sum of \$1 million; and
- c. Granting such other and further relief as is just and equitable, including costs and attorneys' fees.

Dated: March 23, 2016

ADVOCATES FOR JUSTICE,
CHARTERED ATTORNEYS
Attorneys for Plaintiff

By: _____ /s/
Arthur Z. Schwartz
225 Broadway, Suite 1902
New York, New York 10007
(212) 285-1400
aschwartz@afjlaw.com