

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID DONHAUSER,

Plaintiff,

-against-

GLENN S. GOORD, Commissioner, NYDOCS; MARTHA E.
YOURTH, CSW Guidance Specialist; DOMINIC
MARTINELLI, Sex Offender Program Counselor; SUE
CARTER, S.C.C., Oneida Corr. Facility,

Defendants.

ANSWER

Jury Trial Demanded

01-CV-1535

DNH/GHL

Defendants Glenn S. Goord, Martha E. Yourth and Dominic Martinelli,¹ by their attorney, Eliot Spitzer, Attorney General of the State of New York, Nelson R. Sheingold, Assistant Attorney General, of counsel, answer the complaint as follows:

1. Affirmatively aver that on April 15, 2004, the Court dismissed plaintiff's complaint except for plaintiff's official capacity claim for injunctive relief brought pursuant to the Fifth Amendment. This answer is solely submitted for the named and served defendants in their official capacities as to the lone remaining claim.

¹ Defendant Carter has never been served and has not appeared in this action.

2. Admit the allegations contained in paragraph 3 of the complaint to the extent that plaintiff is an inmate in the custody of the New York State Department of Correctional Services (“DOCS”) and was during all times relevant to this action.

3. As to the allegations contained in paragraphs 4, 6, 7, and 8 of the complaint, admit that the named individuals were employed by DOCS in substantially the positions listed during the time period relevant to this action.

4. As to the allegations contained in paragraphs 9 and 10 of the complaint, admit that due to his conviction for a sex crime plaintiff was referred to the Sex Offender Counseling Program and that plaintiff refused to accept the terms of that program. Deny all further allegations.

5. As to the allegations contained in paragraphs 11, 12, 13, and 14 respectfully refer to the letters referenced as the best evidence of their contents and deny any allegations contrary to the actual contents of such letters.

6. As to the allegations contained in paragraph 18 of the complaint refer to the policies, procedures and manual of the DOCS Sex Offender Counseling Program as the best and most complete evidence of its contents and deny any allegations contrary to the contents of such.

7. As to the allegations contained in paragraphs 15 and 16 of the complaint, refer to the decisions of the New York State Board of Parole and DOCS Time Allowance Committee as the best and most complete evidence of their contents and deny any allegations to the contrary of the contents of those determinations.

8. As to the allegations contained in paragraphs 19 of the complaint, aver that plaintiff's due process claim has been dismissed pursuant to the Court's April 15, 2004 Order. To the extent a response is required, defendants deny all allegations.

9. Deny the allegations contained in paragraph 5, 17, 20, 21, and 22 of the complaint.

10. Deny any allegation of the complaint not specifically responded to above.

Defenses

11. The complaint fails to state a claim upon which relief can be granted.

12. The complaint is barred, in whole or in part, under the Eleventh Amendment.

13. Plaintiff has failed to exhaust administrative remedies.

Demand for a Trial by Jury

14. Defendants Glenn S. Goord, Martha E. Yourth and Dominic Martinelli hereby demand a trial by jury.

WHEREFORE, Defendants Glenn S. Goord, Martha E. Yourth and Dominic Martinelli respectfully ask that this Court deny the relief requested, dismiss the complaint, and grant such other relief as to the Court shall seem is just and equitable.

Dated: Albany, New York
May 7, 2004

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