

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

MICHAEL T. RUSSELL,

Plaintiff,

v.

**WILLIAM T. SCHATZMAN,
SHERIFF OF FORSYTH COUNTY,
NORTH CAROLINA (IN HIS
OFFICIAL CAPACITY)**

and

**FORSYTH COUNTY,
NORTH CAROLINA,**

Defendants.

Case No 1:12-cv-580

COMPLAINT

Plaintiff, Michael T. Russell (“Russell”), by the undersigned attorneys, alleges:

1. This civil action is brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301-4333 (“USERRA”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 38 U.S.C. § 4323(b).

3. Venue is proper in this district under 38 U.S.C. § 4323(c)(2) and 28 U.S.C. § 1391(b)(2) because defendant Forsyth County (“County”) is a political subdivision of the State of North Carolina located in the Middle District of North Carolina, defendant William T. Schatzman (“Sheriff Schatzman”), the Sheriff of Forsyth County, North Carolina, is an elected official in the Middle District of North Carolina, and the events giving rise to this lawsuit occurred in this judicial district.

PARTIES

4. Russell resides in Mocksville, North Carolina, within the jurisdiction of this Court.

5. Sheriff Schatzman has the right to hire, discharge, and supervise the employees of the Forsyth County Sheriff's Office ("FCSO") and is also responsible for establishing the terms, conditions, policies, and practices that affect personnel employed by FCSO. Sheriff Schatzman is an elected official within the jurisdiction of this Court and, in his official capacity, is an employer or a person to whom the employer has delegated the performance of employment-related responsibilities within the meaning of 38 U.S.C. § 4303(4). Sheriff Schatzman is sued in his official capacity only.

6. Forsyth County operates within the jurisdiction of this Court and is an employer within the meaning of 38 U.S.C. § 4303(4).

CLAIM FOR RELIEF

7. In or around October 1989, Russell began his employment as a Deputy Sheriff with FCSO in Forsyth County, North Carolina, and he subsequently was promoted to Sergeant Deputy Sheriff.

8. On or about March 1, 2007, Russell enlisted in the Army National Guard. Prior to enlisting in the Army National Guard, Russell served for approximately seven years in the United States Marine Corp.

9. On or about February 11, 2009, Russell deployed to Iraq for a period of more than 365 days pursuant to orders dated February 11, 2009.

10. In or around February 2010, Russell returned from military service and timely sought reemployment with FCSO, and FCSO reinstated him to his position as Sergeant Deputy Sheriff.

11. On or about November 29, 2010, less than one year following Russell's reinstatement to his position with FCSO following active military duty exceeding 180 days, Sheriff Schatzman and Forsyth County discharged Russell from his employment by FCSO without cause.

12. On May 4, 2011, Russell filed a complaint against FCSO under USERRA with the Veterans' Employment and Training Service ("VETS") of the United States Department of Labor.

13. During VETS' investigation of Russell's complaint, Sheriff Schatzman and Forsyth County alleged that Russell was discharged because he allegedly supported the election campaign of another candidate for Sheriff, Dave Griffith, through statements to the media, behavior at campaign events, and financial contributions, and because he allegedly "wanted the other guy to win the election."

14. Russell did not support Griffith's campaign for Forsyth County Sheriff. With the objective of winning a motorcycle rather than the purpose of supporting Griffith's campaign, Russell purchased raffle tickets, at total cost of \$100.00, for a motorcycle raffle whose proceeds went to Griffith's campaign.

15. Sheriff Schatzman and Forsyth County failed to provide notice, express or fairly implied, to Russell that Russell's purchase of tickets for a raffle sponsored by Griffith's campaign would constitute cause for discharge.

16. At the time of his discharge, Russell was in good standing with FCSO and his performance consistently met or exceeded FCSO expectations.

17. The Department of Labor Solicitor's Office concluded that the USERRA complaint Russell filed against FCSO had merit and referred the matter to the United States Department of Justice.

18. Sheriff Schatzman and Forsyth County violated Section 4316 of USERRA by discharging Russell from employment without cause within one year after his reemployment following his return from active military duty in February 2010.

19. As a result of Russell's discharge from employment by Sheriff Schatzman and Forsyth County, Russell has suffered a loss of earnings and other benefits of employment.

20. All conditions precedent have occurred or have been performed.

PRAYER FOR RELIEF

WHEREFORE, Russell prays that this Court enter judgment against Sheriff Schatzman, Forsyth County and all persons in active concert or participation with them, as follows:

- 21. Declare that the discharge of Russell from employment without cause by Sheriff Schatzman and Forsyth County was unlawful and in violation of USERRA;
- 22. Order that Sheriff Schatzman and Forsyth County fully comply with the provisions of USERRA by reinstating Russell and paying him for his loss of earnings and other benefits suffered by reason of their failure or refusal to comply with USERRA's provisions;
- 23. Enjoin Sheriff Schatzman and Forsyth County from taking any action against Russell that fails to comply with USERRA's provisions;
- 24. Award Russell prejudgment interest on the amount of lost compensation found due; and
- 25. Grant such other and further relief as may be just and proper.

Date: June 7, 2012

Respectfully submitted,

THOMAS E. PEREZ
Assistant Attorney General

By: /s/ Delora L. Kennebrew

DELORA L. KENNEBREW (GABN 414320)
Chief

/s/ Karen D. Woodard

KAREN D. WOODARD (MD – No number issued)
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