

UNITED STATES DISTRICT COURT
FOR
THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

MICHAEL A. AQUINO
(address deleted)

San Francisco, California 94133,
PLAINTIFF,

v.

THE HONORABLE MICHAEL P. W. STONE
Secretary of the Army
Department of the Army
Washington, D.C.,
DEFENDANT,

Civil Action
No 90-1547-A

Also Serve The Attorney General Of the United States
Department of Justice
Washington, D.C.
and

The United States Attorney
1101 King Street, Suite 502
Alexandria, Virginia

COMPLAINT FOR DECLARATORY JUDGMENT AND DAMAGES

This is an action for declaratory judgment to amend the titling action and to remove Plaintiff's name from the title block of United States Army Criminal Investigation Command (USACIDC or CID) Report of Investigation (ROI) Final "C" - 0610 88 - CID 026 -69259 5K3/6F3/6EZ/6A1/5M2/5Y2/DIMIS. This is also an action for damages, reasonable attorney's fees and costs. For a discussion of the substance and import of a titling action, see Exhibit I. All plaintiff's administrative remedies have been exhausted.

JURISDICTION AND VENUE

Jurisdiction is conferred on this Court by 28 U.S.C. 1331(a) and by The Administrative Procedure Act, as amended, 5 U.S.C. 552a(g)(1)(A) &(C). Venue is proper in this District as the claim arose in this District and both the agency records and control over the agency records are situated in this District.

PARTIES

1. Plaintiff, Michael A. Aquino, is a Lieutenant Colonel in the United States Army Reserve.
2. Defendant, the Honorable Michael P. W. Stone, in his official capacity, is the Secretary of the Army.

FACTS

1. Plaintiff, then an active duty Lieutenant Colonel in the United States Army, was titled by the U.S. Army CID, on August 11, 1989 for Conspiracy, Kidnapping, Sodomy, Indecent Acts or Liberties With a Child, Indecent Acts, False Swearing, Intentional Noncompliance With Article 30, Uniform Code of Military Justice, Maltreatment of a Subordinate and Conduct Unbecoming an Officer.
2. Plaintiff sought to amend the titling action and requested that Plaintiff's name be removed from the title block.
3. The CID granted relief in part and denied relief in part. Plaintiff remains titled for Conspiracy, Kidnapping, Sodomy, Indecent Acts and False Swearing.
4. Plaintiff now seeks de novo judicial review of both the titling action and Defendant's failure to accurately amend the titling action.
5. Defendant's knowing failure to accurately amend the titling action was a willful and intentional action designed to cover up Defendant's improper and baseless investigation of Plaintiff and to continue to hold up Plaintiff to ridicule.
6. The result of such inaccurately maintained records and the willful and intentional misconduct of the Defendant was that Plaintiff was denied by an Army board action the opportunity to continue Plaintiff's career on active duty, to be promoted in the normal course and to retire at the end of Plaintiff's active duty career, all of which has damaged Plaintiff. See 5 U.S.C.552a(g)(4)(A).

CAUSE OF ACTION

7. The titling of Plaintiff as well as the failure to accurately amend the titling action was an abuse of discretion by the Defendant, was arbitrary and capricious and there was no substantial evidence on the record to provide probable cause to believe any offense had been committed by Plaintiff. The willful and intentional failure to accurately maintain this titling action has caused Plaintiff to lose Plaintiff's active duty Army career and attendant benefits to include retirement benefits.

PRAYER FOR RELIEF

That this Honorable Court declare the CID titling of Plaintiff to have been without merit and the Defendant be ordered to amend the titling action and to remove the Plaintiff's name from the title block of the aforesaid CID/ROI and to publish said removal pursuant to applicable regulations.

That this Honorable Court award the Plaintiff actual damages for the willful and intentional misconduct of the Defendant.

That reasonable Attorney's fees and costs be awarded the Plaintiff.

Respectfully submitted,

Gary R. Meyers, Esq.
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November 15, 1990
