

Springfield Police Case Settled for \$60,000

MANCHESTER - A police brutality case against the Town of Springfield and three of its police officers was settled last month during the Early Neutral Evaluation (ENE) session which is required of all cases filed in federal court.

According to Brad Myerson, lawyer for plaintiff Mary Eastman, the cases against the individual police officers were dismissed as part of the settlement agreement made with James Carroll of Powers English & Carroll, who represented the Town, and Ritchie Berger of Dinse Erdmann Knapp & McAndrew, who represented the officers. Earlier in the litigation, Nancy Sheahan of McNeil Murray & Sheahan had represented all defendants, but she requested permission to withdraw when a conflict of interest developed.

The case involved an incident in the middle of the night in 1993 when Eastman, a single mother and student at Community College, stopped at a pay phone in downtown Springfield to call her mother. Police, who had heard there might have been a domestic incident at Eastman's home earlier in the evening, stopped to speak with her. According to Myerson, the police instead of trying to calm an alleged victim of domestic assault, were hostile and confrontational. The officers forced Eastman to blow an alcosensor (which showed she was under the limit for DUI) and then told her they were going to drive her home. Eastman did not object, but went to her car to retrieve her school books. The officers asked Eastman who she had been calling on the telephone, and allegedly became enraged when Eastman responded that the information was none of the officers' business.

According to Eastman, she was hit in the face by Officer Edwin Brodie and then knocked down from behind by Officer Mark Fountain. While on the ground, Eastman claims she was kneed in the coccyx and her face was ground into the pavement. She was then handcuffed with her arms yanked behind her back, put into the Springfield cruiser, and driven to the police station where she was cited for disorderly conduct. When Eastman refused to sign the citation, the police transported her to the Woodstock Community Correctional Center.

At Woodstock, Eastman was seen by a nurse who would have testified that she was bruised, beaten and crying hysterically, according to Myerson. Eastman was later arraigned on the disorderly conduct charge, but the charges were subsequently dropped by the Windsor County State's Attorney's office.

Eastman went looking for a lawyer using the Vermont Bar Associations Lawyer Referral Program. She also contacted the Vermont ACLU, which was willing to take the case. Myerson, who has

acted as a cooperating attorney with the ACLU in the past, agreed to take the case under a contingency fee agreement. In the course of his investigation, Myerson ran an advertisement in the weekly *Springfield Reporter* looking for people who had experience with Springfield police using excessive force. He was shocked to receive more than a dozen calls in response to the ad, and began to build a case against the Town for "institutional tolerance for excessive force, notwithstanding written policies to the contrary," Myerson told *Vermont Lawyer*.

The issue was important in terms of establishing municipal liability, since governmental entities are not liable under a theory of *respondeat superior*. By the time he had finished his investigation, Myerson believed that the case against the municipality was very strong. "We needed to show either knowledge, acquiescence, or a pattern of conduct that would infer tolerance of the use of excessive force," Myerson said he had "eight to ten people ready to testify that they had been victimized by the use of excessive force, with many of the incidents involving Officers Brodie and Fountain." Despite Springfield's policy that use of force requires filing a written incident report, only one such report was ever produced in discovery. It involved an incident in which Officer Fountain had used force and Officer Brodie had done the investigation.

In connection with the Eastman incident, no written report was filed. One of the officers explained the apparent departure from official policy: "We understood that only when the use of force results in injury would we have to make a report."

The complaint Myerson filed in federal court included both federal and state claims: violation of § 1983 (based on deprivation of rights under the Fourth, Fifth and Sixth Amendments), assault and battery, malicious prosecution, infliction of emotional distress, false arrest and imprisonment, violation of the Vermont Constitution, the Public Defender Act and Criminal Rule 3.

Although the final settlement involved dismissing the case against the officers, Myerson said he felt the officers could not have prevailed on a claim of qualified immunity and that the case for punitive damages against the officers was a good one. "No cop could have reasonably believed that what they did was reasonable," he explained. His position was supported by his expert, Robert Edwards of Barre, a graduate of the FBI Academy and a former municipal police chief. Edwards had been used as an expert by Rick Bloomer in *Call v. City of Rutland*, and Myerson learned of him from Bloomer.

Myerson estimates that he incurred between \$17,500 and \$20,000 in legal fees before the case settled. Since successful police brutality cases are "few and far between," he says that it was hard to evaluate the case monetarily. However, the recent settlement by the State of the Sabrina Graham case was helpful in the negotiations, Myerson said. Although he didn't have a videotape (as Graham had to bolster her claim that her rights had been violated by two state troopers while detained at the Woodstock Correctional Center), Myerson said the evidence of the pattern of conduct in Springfield was very valuable in settling the case satisfactorily.

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