

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

JAMES MCVEIGH,

Plaintiff,

v.

THE ROMAN CATHOLIC DIOCESE OF BROOKLYN, NEW YORK;
and ROMAN CATHOLIC CHURCH OF ST. FRANCIS DE SALES IN
THE BOROUGH OF QUEENS IN THE CITY OF NEW YORK,

Defendants.

Index No.

SUMMONS

Date Index No. Purchased:
February 16, 2020

To the above named Defendant(s)

THE ROMAN CATHOLIC DIOCESE OF BROOKLYN, NEW YORK, 310 Prospect Park West,
Brooklyn, Kings County, New York; and
ROMAN CATHOLIC CHURCH OF ST. FRANCIS DE SALES IN THE BOROUGH OF QUEENS IN
THE CITY OF NEW YORK, 129-16 Rockaway Beach Boulevard, Belle Harbor, Queens
County, New York

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is one or more Defendant resides in Kings County, New York, which is located in Kings County, New York.

Dated: New York, New York
February 16, 2020

SIMMONS HANLY CONROY LLC



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**SUPREME COURT OF THE STATE OF NEW YORK
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JAMES McVEIGH,

Plaintiff,

v.

THE ROMAN CATHOLIC DIOCESE OF BROOKLYN, NEW
YORK; and ROMAN CATHOLIC CHURCH OF ST. FRANCIS
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COMPLAINT

JURY TRIAL DEMANDED

Plaintiff James McVeigh, by his attorneys Simmons Hanly Conroy LLC and the Law Offices of Mitchell Garabedian, brings this action against The Roman Catholic Diocese of Brooklyn, New York; and Roman Catholic Church of St. Francis de Sales in the Borough of Queens in the City of New York, and alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that each Defendant resides in New York.

2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

3. Venue for this action is proper in the County of Kings pursuant to CPLR 503 in that one or more of the Defendants reside in this County and a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this County.

PARTIES

4. Plaintiff James McVeigh ("Plaintiff") is an individual residing in Rockaway Park, Queens County, New York.

5. Defendant The Roman Catholic Diocese of Brooklyn (“Diocese of Brooklyn”) is a religious corporation organized pursuant to the New York Religious Corporations Law, with its principal office at 310 Prospect Park West, Brooklyn, Kings County, New York. The Diocese of Brooklyn is a Roman Catholic diocese. At all relevant times, the Diocese of Brooklyn created, oversaw, supervised, managed, controlled, directed and operated parishes or churches of the Diocese of Brooklyn, including during all relevant times, Roman Catholic Church of St. Francis de Sales in the Borough of Queens in the City of New York.

6. Defendant Roman Catholic Church of St. Francis de Sales in the Borough of Queens in the City of New York (“St. Francis de Sales”) is a Roman Catholic parish within and under the authority of the Diocese of Brooklyn and is a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 129-16 Rockaway Beach Boulevard, Belle Harbor, Queens County, New York. At all relevant times, the Diocese of Brooklyn created, oversaw, supervised, managed, controlled, directed and operated St. Francis de Sales.

Facts Common to All Claims

7. Plaintiff and his family were parishioners of and attended St. Francis de Sales when Plaintiff was a minor child. When Plaintiff was approximately ten years of age to thirteen years of age, Plaintiff served as an altar boy at St. Francis de Sales. During approximately the same time period, Plaintiff worked on a part-time basis answering the telephone and performing other tasks at the rectory affiliated with St. Francis de Sales.

8. During times relevant to the allegations set forth herein, Father Dinualdo Gutierrez, later known as Bishop Dinualdo Gutierrez (“Bishop Gutierrez”) was assigned by Defendant Diocese of Brooklyn to be a priest at St. Francis de Sales, where Plaintiff and Plaintiff’s family were parishioners. Bishop Gutierrez died in 2019.

9. Through his positions at, within, or for Defendants Diocese of Brooklyn and St. Francis de Sales, Bishop Gutierrez was put in direct contact with members of the

Plaintiff's family, including Plaintiff, a minor parishioner of the Diocese of Brooklyn.

10. From approximately 1969 when Plaintiff was approximately eleven years of age, to approximately 1971 when Plaintiff was approximately thirteen years of age, Plaintiff served Masses as an altar boy and interacted with Bishop Gutierrez in in the course of Plaintiff's employment at the rectory affiliated with St. Francis de Sales.

11. Bishop Gutierrez used such encounters, gained through his position at St. Francis de Sales which granted him access to Plaintiff when Plaintiff was approximately eleven to approximately thirteen years of age, to repeatedly sexually assault, sexually abuse, and/or have sexual contact with the Plaintiff in violation of the laws of the State of New York.

Defendants' Responsibility for the Abuse Committed by Bishop Gutierrez

12. At all times material hereto, Bishop Gutierrez was under the management, supervision, employ, direction and/or control of Defendants Diocese of Brooklyn and St. Francis de Sales.

13. Through his positions at, within, or for Defendants Diocese of Brooklyn and St. Francis de Sales, Bishop Gutierrez was put in direct contact with Plaintiff.

14. Bishop Gutierrez used his position at, within, or for Defendants Diocese of Brooklyn and St. Francis de Sales and the implicit representations made by them about his character that accompanied that position, to gain Plaintiff's trust and confidence and to create an opportunity to be alone with, and to sexually touch, Plaintiff.

15. Defendants Diocese of Brooklyn and St. Francis de Sales had the duty to reasonably manage, supervise, control and/or direct priests who served at St. Francis de Sales, and specifically, had a duty not to aid pedophiles such as Bishop Gutierrez by assigning, maintaining, and/or appointing them to positions with access to minors.

16. Defendants Diocese of Brooklyn and St. Francis de Sales knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Bishop Gutierrez, who sexually abused

Plaintiff.

17. Defendant Diocese of Brooklyn had a duty to the Plaintiff to properly supervise Diocese of Brooklyn priests to ensure that priests did not use their positions with the Diocese of Brooklyn as a tool for grooming and assaulting vulnerable children. Defendant Diocese of Brooklyn knew or should have known that Bishop Gutierrez used his positions with the Diocese of Brooklyn to sexually abuse minor children, including the Plaintiff.

Consequences of the Abuse

18. Plaintiff suffered personal physical and psychological injuries and damages as a result of Bishop Gutierrez’s actions, as well as other damages related thereto, as a result of the childhood sexual abuse Plaintiff sustained.

19. As a direct result of the Defendants Diocese of Brooklyn’s and St. Francis de Sales’s conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Bishop Gutierrez’s sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm he suffered as a result.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Negligent Hiring/Retention/Supervision/Direction

20. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 19 as if fully set forth herein.

21. Defendants Diocese of Brooklyn and St. Francis de Sales owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the

influence or supervision of Bishop Gutierrez in his role as priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Bishop Gutierrez did not use his assigned position to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York.

22. Defendant Diocese of Brooklyn at all relevant times represented that the parishes of the Diocese of Brooklyn were safe places for minors to attend, and that its priests were individuals to whom it was safe to entrust the care of minor children. Defendant Diocese of Brooklyn entered into an express and/or implied duty to safely treat Plaintiff and assumed the duty to protect and care for him.

23. Bishop Gutierrez repeatedly sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff when Plaintiff was a minor in the rectory affiliated with St. Francis de Sales.

24. Defendants Diocese of Brooklyn and St. Francis de Sales negligently hired, retained, directed, and supervised Bishop Gutierrez, though they knew or should have known that Bishop Gutierrez posed a threat of sexual abuse to minors.

25. Defendants Diocese of Brooklyn and St. Francis de Sales knew or should have known of Bishop Gutierrez's propensity for the conduct which caused Plaintiff's injuries prior to, or at the time of, the injuries' occurrence.

26. Defendants Diocese of Brooklyn and St. Francis de Sales were negligent in failing to properly supervise Bishop Gutierrez.

27. The sexual abuse of children by adults, including priests, is a foreseeable result of negligence.

28. At all times material hereto, Defendants Diocese of Brooklyn's and St. Francis de Sales's actions were willful, wanton, malicious, reckless, negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

29. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

30. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

SECOND CAUSE OF ACTION
Negligence/Gross Negligence

31. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 19 as if fully set forth herein.

32. Defendants Diocese of Brooklyn and St. Francis de Sales knew, or were negligent in not knowing, that Bishop Gutierrez posed a threat of sexual abuse to children.

33. The acts of Bishop Gutierrez described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his respective employment, appointment, assignment, and/or agency with Defendants Diocese of Brooklyn and St. Francis de Sales.

34. Defendants Diocese of Brooklyn and St. Francis de Sales owed Plaintiff, a minor at the relevant times of abuse, a duty to protect him from Bishop Gutierrez's sexual deviancy and the consequential damages, both prior to and/or subsequent to Bishop Gutierrez's misconduct.

35. Defendants Diocese of Brooklyn's and St. Francis de Sales's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.

36. Defendants Diocese of Brooklyn and St. Francis de Sales:
- a. gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others;
 - b. failed adequately to supervise the activities of Bishop Gutierrez;
 - c. permitted, and/or intentionally failed and/or neglected to prevent,

negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, upon premises or with instrumentalities under their control; and

d. allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint to occur.

37. At all times material hereto, with regard to the allegations contained herein, Bishop Gutierrez was under the supervision, employ, direction and/or control of Defendants Diocese of Brooklyn and St. Francis de Sales.

38. At all times material hereto, Defendants Diocese of Brooklyn's and St. Francis de Sales's actions were willful, wanton, malicious, reckless, negligent and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

39. As a direct and/or indirect result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

40. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

THIRD CAUSE OF ACTION

Breach of Non-Delegable Duty

41. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 19 as if fully set forth herein.

42. Plaintiff, when he was a minor, was placed in the care and supervision of the Defendants Diocese of Brooklyn and St. Francis de Sales for the purposes of, *inter alia*, providing Plaintiff with a safe environment in which to participate in religious, educational, youth and recreational activities. There existed a non-delegable duty of trust between Plaintiff and Defendants Diocese of Brooklyn and St. Francis de Sales.

43. Plaintiff was a vulnerable child when placed within the care of Defendants Diocese of Brooklyn and St. Francis de Sales.

44. As a consequence, Defendants Diocese of Brooklyn and St. Francis de Sales were in the best position to prevent Plaintiff's abuse, to learn of Bishop Gutierrez's repeated sexual abuse of Plaintiff, and to stop it.

45. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of the Defendants Diocese of Brooklyn and St. Francis de Sales, Defendants Diocese of Brooklyn and St. Francis de Sales breached their non-delegable duty to Plaintiff.

46. At all times material hereto, Bishop Gutierrez was under the supervision, employ, direction and/or control of the Defendants Diocese of Brooklyn and St. Francis de Sales.

47. As a direct result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

48. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**FOURTH CAUSE OF ACTION
Breach of Fiduciary Duty**

49. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 19 as if fully set forth herein.

50. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants Diocese of Brooklyn and St. Francis de Sales. This relationship is based on the entrustment of the Plaintiff while he was a minor child to the care and supervision of the agent or servant of the Defendants Diocese of Brooklyn and St. Francis de Sales. This entrustment of the Plaintiff to the care and supervision of the Defendants Diocese of Brooklyn and St. Francis de Sales, while the Plaintiff was a minor

child, required the Defendants Diocese of Brooklyn and St. Francis de Sales to assume a fiduciary relationship and to act in the best interests of the Plaintiff, as well as to protect him while he was a minor and vulnerable child.

51. Pursuant to their fiduciary relationship, Defendants Diocese of Brooklyn and St. Francis de Sales were entrusted with the well-being, care, and safety of Plaintiff.

52. Pursuant to their fiduciary relationship, Defendants Diocese of Brooklyn and St. Francis de Sales assumed a duty to act in the best interests of Plaintiff.

53. Defendants Diocese of Brooklyn and St. Francis de Sales breached their fiduciary duty to Plaintiff.

54. At all times material hereto, the actions and/or inactions of Defendants Diocese of Brooklyn and St. Francis de Sales were willful, wanton, malicious, reckless, negligent and outrageous in their disregard for the rights and safety of Plaintiff.

55. As a direct result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

56. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

FIFTH CAUSE OF ACTION

Negligent Infliction of Emotional Distress

57. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 19 as if fully set forth herein.

58. As described above, the actions of Defendants Diocese of Brooklyn and St. Francis de Sales, their agents, servants, and/or employees were conducted in a negligent and/or grossly negligent manner.

59. Defendants Diocese of Brooklyn's and St. Francis de Sales's actions endangered Plaintiff's safety and caused him to fear for his own safety.

60. As a direct and proximate result of Defendants Diocese of Brooklyn's and

St. Francis de Sales's actions, which included but were not limited to negligent and/or grossly negligent conduct, Plaintiff suffered and will continue to suffer the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

61. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

SIXTH CAUSE OF ACTION

Breach of Duty in Loco Parentis

62. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 19 as if fully set forth herein.

63. While he was a minor, Plaintiff was entrusted by his parents to the control of the Defendants Diocese of Brooklyn and St. Francis de Sales, as well as directly to Bishop Gutierrez, an agent or servant of Defendants Diocese of Brooklyn and St. Francis de Sales, for the purposes of *inter alia*, providing Plaintiff with appropriate guidance and an opportunity to enjoy educational and youth activities under responsible adult supervision. Defendants Diocese of Brooklyn and St. Francis de Sales owe – and owed – a duty to children entrusted to them to act *in loco parentis* and to prevent foreseeable injuries.

64. Defendants Diocese of Brooklyn and St. Francis de Sales breached their duty to act *in loco parentis*.

65. At all times material hereto, Defendants Diocese of Brooklyn's and St. Francis de Sales's actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

66. As a direct result of Defendants Diocese of Brooklyn's and St. Francis de Sales's conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

67. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

WHEREFORE Plaintiff, demands judgment against the Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proved at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding prejudgment interest to the extent permitted by law;
- D. Awarding costs and fees of this action, including attorneys' fees, to the extent permitted by law; and
- E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: February 16, 2020
New York, New York

Respectfully Submitted,

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