

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

MARY DUFFY,
Plaintiff,

– against –

MONROE FREE LIBRARY; BOARD OF TRUSTEES OF
THE MONROE FREE LIBRARY; MARILYN J.
MCINTOSH, individually and in her official capacity;
PATRICIA C. SHANLEY, individually and in her official
capacity; CAROL BEZKOROWAJNY, individually and in
her official capacity,

Defendants.

Index No. EF002026-2022

COMPLAINT

Jury Trial Demanded

Plaintiff Mary Duffy ("Duffy" or "Plaintiff"), for her Complaint against Defendants Monroe Free Library ("Monroe Free Library" or the "Library"), the Board of Trustees of The Monroe Free Library ("Board of Trustees"), Marilyn J. McIntosh ("McIntosh"), individually and in her official capacity, Patricia C. Shanley ("Shanley"), individually and in her official capacity, and Carol Bezkorowajny ("Bezkorowajny"), individually and in her official capacity, respectfully alleges:

PRELIMINARY STATEMENT

1. On April 11, 2004, Defendant Monroe Free Library hired Mary Duffy as a Reference Clerk. By June 2013, she was promoted to Assistant Director of the Library, just one step below the Library's top position, Executive Director, a role filled by Defendant Marilyn J. McIntosh.

2. During the years following her promotion, Ms. Duffy showed exemplary performance, she received numerous positive job performance reviews, and she acquired the

advanced skills, experience and education to enable her to one day assume the role of Executive Director. In all of her years as Assistant Director, Duffy never received a bad performance evaluation or negative criticism of her work. She was even complimented by the Library's Board of Trustees many times for her financial management skills, organization and collaboration skills.

3. In 2019, as part of Ms. Duffy's Performance Evaluation, Defendant McIntosh even praised her stating, "I feel you have arrived at a place where I can recommend you as my replacement. You are always open to learning all the ropes of being a director, and I feel confident that if chosen, you will succeed." Because an Assistant Director is often trained to ultimately assume the role of Executive Director, Ms. Duffy had spent years preparing and acquiring the skills and experience to assume the duties of Executive Director. By all accounts, she was on track to succeed McIntosh and be promoted to Executive Director.

4. In February-March 2020, the COVID-19 outbreak began. During the start of the pandemic, a toxic, political environment arose and festered at the Monroe Free Library, with Defendants McIntosh, Bezkorowajny, and others, making a mockery of COVID-19 mandates and precautions. Defendant McIntosh, a vocal Donald Trump supporter, even questioned the validity and impact of the COVID-19 virus and the use of personal protective equipment ("PPE") and precautions. McIntosh engaged instead in quack pseudo-science by purchasing a special "ultrasonic" pendant to protect herself from the COVID-19 virus. She made it clear to others at the Library that it was very expensive and not everyone could afford this special pendant. Defendant Bezkorowajny, McIntosh's longtime friend and colleague, refused to wear a mask.

5. During the COVID-19 pandemic Defendant McIntosh, as Executive Director, openly violated government ordered mandate protections and safety measures, and ridiculed

those that sought to comply with them. McIntosh injected toxic politics into the workplace, creating a hostile environment for those that didn't agree with her views. The Defendants, led by Defendant McIntosh, would come to punish Ms. Duffy for speaking out against lax and non-existent COVID-19 measures, for Duffy's diligent efforts to protect the health and safety of the staff and patrons of the Library, and even for Duffy's self-quarantine after being exposed to the COVID-19 virus. Duffy's efforts to comply with the law, and to deal with COVID-19 safety at the Monroe Free Library, would soon jeopardize her job and her position.

6. The Defendants, led by McIntosh, Shanley (President of the Board of Trustees) and Bezkorowajny, engaged in retaliatory efforts to sabotage Duffy's career, by such wrongful and unlawful acts as excluding her from work participation and job assignments, by isolating and ostracizing her, and by making false and libelous accusations about her character that she was disloyal, "not a team player", that she "hid in her office" during the pandemic, that she lacked the abilities to perform her job or achieve promotion, and that she was just too old. After the COVID-19 incidents, Defendant McIntosh marginalized Duffy by shutting her out of certain Library operations, and McIntosh would come to communicate with Duffy as little as she possibly could until McIntosh's retirement.

7. When McIntosh had formally announced her retirement in October 2020, Ms. Duffy expressed her longtime interest in advancing to the Executive Director position. In about January 2021, the Library Board of Trustees formed a Director Search Committee to search for a new Executive Director. Defendants McIntosh, Bezkorowajny, and Shanley would come to exercise a malign influence over the Director Search Committee and the Board of Trustees, continuing retaliatory efforts, and republishing numerous defamatory falsehoods and ageist

comments about Ms. Duffy with the intent and goal of denying her promotion to Executive Director, penalizing her and ruining her career.

8. On April 12, 2021, the Defendants continued a pattern of retaliatory animus and activities by wrongfully, maliciously, recklessly, and in a discriminatory ageist manner, denying Ms. Duffy a promotion to Executive Director, despite her 17 years of exemplary service, numerous achievements and exceptional qualifications. Instead, the position was awarded to a candidate 26 years younger, that lacked the qualifications for the job, had less seniority, was significantly less experienced in the New York public library system, and who was subjected to less scrutiny in the selection process. To date, Ms. Duffy continues to suffer from the impact of Defendants' retaliatory and defamatory conduct, along with ongoing wrongful conduct that continues to adversely impact Duffy's current and future employment.

9. Plaintiff brings this action against the Defendants for: (i) violations of N.Y. Lab. Law § 740's prohibition against retaliation for disclosing an illegal practice of an employer that presents a substantial and significant danger to the public health; (ii) violations of New York State Human Rights Law, N.Y. Executive Law §§ 290 to 301 ("NYSHRL")'s prohibitions against age discrimination; (iii) defamation; and (iv) breach of fiduciary duty, duty of care, and violation of and failure to comply with the Bylaws of the Monroe Free Library and associated rules and procedure, the NYSHRL, New York Non-Profit Corporation Law, Education Law, the New York State Board of Regents, and applicable federal and state statutes. Plaintiff seeks declaratory and other relief.

PARTIES

10. Plaintiff Mary Duffy ("Duffy" or "Plaintiff"), is a 61-year old woman, and a long-time resident of Orange County, New York, where the Monroe Free Library is located. At all relevant times, Plaintiff was employed as the Assistant Director of the Monroe Free Library.

11. Defendant Monroe Free Library ("Monroe Free Library" or the "Library") is a domestic 501(c)(3) non-profit corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business at 44 Millpond Parkway, Monroe, NY 10950. The Monroe Free Library is a free association library, a private not-for-profit corporation chartered by the Board of Regents. The Library is an employer as defined by the NYSHRL, New York Non-Profit Corporation Law ("N-PCL"), and N.Y. Lab. Law § 740.

12. Defendant Monroe Free Library began operations in 1908 to provide literacy, cultural, community and educational services to the community. According to the Library's most recent tax returns, it has an annual budget of approximately \$1.3 million dollars, and it serves approximately 19,000 residents of the Town of Monroe.

13. Defendant Monroe Free Library is governed by the Monroe Free Library Articles of Incorporation, the Monroe Free Library ByLaws ("MFL Bylaws"), and the N-PCL. It operates as a private non-profit library association under the N-PCL, Education Law, and other state and federal laws.¹

14. Defendant Board of Trustees of The Monroe Free Library ("Board of Trustees") is the elected Board charged with governing and managing the Monroe Free Library. The duties and responsibilities of the Board of Trustees are set forth in the Articles of Incorporation, the

¹ MFL Bylaws, accessed at: https://www.monroefreelibrary.org/Portals/0/PDF/ByLaws/MFL%20Bylaws_Referenced_17Jan2020.pdf, and incorporated by reference herein.

MFL ByLaws, the Handbook For Library Trustees of the State of New York (as amended)(the “Handbook For Library Trustees”, the N-PCL, Education Law, and applicable federal and state statutes.²

15. At all times hereinafter mentioned, the Defendant Board of Trustees were required to govern and manage the Monroe Free Library in accordance with the Articles of Incorporation, the MFL ByLaws, the Handbook For Library Trustees, the N-PCL, Education Law, and applicable federal and state statutes.

16. Defendant Marilyn J. McIntosh (“McIntosh”) is an individual and, upon information and belief, resides within the geographical boundaries encompassing Defendant Library in Orange County, New York. From 1994 through April 2021, Defendant McIntosh was the Executive Director of the Monroe Free Library.

17. Defendant Patricia C. Shanley (“Shanley”) is an individual and, upon information and belief, resides within the geographical boundaries encompassing Defendant Library in Orange County, New York. At all times hereinafter mentioned, Shanley was required to exercise her role as President and member of the Board of Trustees in accordance with the Articles of Incorporation, the MFL ByLaws, the Handbook For Library Trustees, the N-PCL, Education Law, and applicable federal and state statutes.

18. Defendant Carol Bezkorowajny (“Bezkorowajny”) is an individual and, upon information and belief, resides within the geographical boundaries encompassing Defendant Library in Orange County, New York. At all relevant times, Bezkorowajny was the Head of Circulation at the Monroe Free Library.

² Handbook For Library Trustees of the State of New York, accessed at: <https://www.nysl.nysed.gov/libdev/trustees/handbook/index.html>, and incorporated by reference herein.

JURISDICTION AND VENUE

19. Pursuant to CPLR § 301 this court has personal jurisdiction over Defendants.

20. Pursuant to CPLR § 503(a) and (c) venue is proper because a substantial part of the events or omissions giving rise to the claims occurred in Orange County, New York.

NOTICE OF CLAIM

21. On or about July 12, 2021, all Defendants, along with the County of Orange, the Town of Monroe, the New York State Education Department, and the Board of Regents of the University of the State of New York, were duly served with a Notice of Claim on Plaintiff's behalf seeking damages that include loss of pay, lost career, opportunity, damage to reputation, severe mental anguish, psychological humiliation, reputational harm, trauma and financial expense, liquidated damages, injunctive relief, costs and attorneys' fees (**Exhibit "A"**).

22. To date, the Defendants have failed and/or refused to adjust Plaintiff's claim in any respect.

FACTUAL BACKGROUND

23. On about April 11, 2004, Ms. Duffy first began working for Defendant Monroe Free Library as a Reference Clerk.

24. At this time, Defendant McIntosh was the Executive Director of Defendant Monroe Free Library, the top executive position at the Library.

25. During her time as a Reference Clerk, Ms. Duffy applied to graduate school and began work towards a Master of Library Science degree; she would graduate in December 2012 with honors. At all times, Ms. Duffy immersed herself in her job and performed in an exemplary manner.

26. In early May 2013, Defendant McIntosh, recognizing Duffy's credentials, qualities and capabilities, offered Ms. Duffy the position of Assistant Director, a position just one step below McIntosh's position as Executive Director.

27. On about June 1, 2013, based upon McIntosh's recommendation, Monroe Free Library promoted Ms. Duffy to Assistant Director of the Library.

28. In this new position, Ms. Duffy took on the duties of providing administrative assistance to Defendant McIntosh, as well as assuming the responsibilities of the Executive Director in McIntosh's absence.

29. As Assistant Director, Ms. Duffy performed managerial duties related to Human Resources, Library Operations, the Public Relations Department and Maintenance, audits, and the Library's Annual Budget. Ms. Duffy was also completely responsible for payroll and administering employee benefits. In her role, Ms. Duffy would represent the Library at community organizations, including as Secretary of the Board of Directors of the Greater Monroe Chamber of Commerce, and Secretary of the Board of Directors of the Lions Club of Monroe. Many of the Assistant Director job duties were shared with the Executive Director.

30. For the next 7 years and 10 months, Ms. Duffy continued to perform at an exceptional level receiving consistent positive performance reviews and without any complaints from management or patrons related to her job performance. Ms. Duffy has received praise from the Board of Trustees on numerous occasions, and has never received a negative performance evaluation as Assistant Director.

31. Because an Assistant Director is often trained to ultimately assume the role of Executive Director, Ms. Duffy spent those 7 years and 10 months preparing and acquiring the skills and experience to assume the duties of Executive Director.

32. On several occasions during her time as the Assistant Director, Ms. Duffy even functioned as the Acting Executive Director when the then-Executive Director, Defendant McIntosh, was on vacation or out of work for other reasons. Ms. Duffy's work during those times was exemplary and without a single issue.

33. In January 2019, as part of Ms. Duffy's Performance Evaluation, Defendant McIntosh praised Ms. Duffy stating, "I feel you have arrived at a place where I can recommend you as my replacement. You are always open to learning all the ropes of being a director, and I feel confident that if chosen, you will succeed."

34. During this time Ms. Duffy continued to assume more and more responsibilities as Assistant Director, performing her tasks and leading her team in an exemplary manner.

**The COVID-19 Outbreak
and Toxic Environment at the Monroe Free Library**

35. In February-March 2020, the COVID-19 outbreak and pandemic began, as it spread dramatically throughout the United States and New York. The federal government, the CDC and New York State authorities issued warnings, directives and guidelines to protect the health and safety of citizens and workers.

36. Instead of acknowledging the threat, however, Defendants McIntosh, Bezkorowajny, and others, began making a mockery of COVID-19 mandates and precautions. Defendant McIntosh, a vocal Donald Trump supporter, questioned the validity and impact of the COVID-19 virus, and the use of personal protective equipment ("PPE") and precautions.

37. McIntosh also engaged instead in quack pseudo-science by purchasing an "ultrasonic" pendant to protect herself from the COVID-19 virus. McIntosh stated to staff at the Library that the pendant was very expensive and not everyone could afford this special pendant.

38. On or about March 14, 2020, the Monroe Free Library closed to the public after New York State mandates compelled all non-essential workers to stay home and remain on lockdown in order to mitigate the rampant spread of the COVID-19 virus in New York.

39. At this time, the Ramapo-Catskill Library System Office, which oversees Monroe Free Library, also provided shutdown guidelines to Monroe Free Library. Heeding the New York State mandates and shutdown guidelines, the Ramapo-Catskill Library System Office completely shut down at that time and no management staff worked in person at the Ramapo-Catskill Library System office.

40. Despite the New York State mandates that only essential workers work in person, and the Ramapo-Catskill Library System Office shutdown guidelines, Defendant McIntosh insisted on scheduling management staff to work in person at the Library.

41. Management staff were not essential workers within the meaning of the New York State COVID-19 mandates.

42. At this time, a toxic, political environment arose and festered at the Monroe Free Library, incited by Defendants McIntosh and Bezkorowajny. McIntosh injected toxic politics into the workplace, creating a hostile environment at the Library for those that didn't agree with her views. Defendant McIntosh voiced her disgust and political opinions towards others about everything from questioning the reality of the COVID-19 pandemic, to the need for mandates, masks, PPE, social distancing and even hand sanitizers.

43. On March 30, 2020, Ms. Duffy objected to Defendant McIntosh's decision and directive that management staff work in person at the Library because of the danger posed both to the management staff and to the public health and safety during these critical weeks of the

COVID-19 shutdown. In an email to McIntosh, Duffy stated, among other things, “[t]he coronavirus is real and it cannot be denied that it is here”. Duffy also stated:

“I am very upset that the MFL management team continues to be exposed to the virus at work daily, via the mailperson, UPS delivery person, and possibly surfaces touched by the cleaning team ... The MFL management team is capable of working at home; we should not continue to be forced to break our quarantine to go into the library to work assigned shifts. As an important community organization, and for the health of our management team, MFL should follow all NYS mandates-including 100% nonessential business work-at-home mandates. If we do our part and stay home, this quarantine will end soon for everyone.”

44. In a March 30, 2020 email to Defendant McIntosh, Duffy also stated:

“I will have to agree to disagree on working in the building. All work being done in the building can be done at home ... I believe a 5 hour workshift in the building is harmful to staff. The management team is bringing germs home to their families and putting them at risk. I cannot understand the rationale for assigning workshifts and forcing people to risk their family's safety. All mandates, which are being discussed daily, are based on science and data. And the next few weeks are looking very scary. I hope this virus doesn't affect any of our management team-we are only human after all.”

45. Despite the precedent set by the Ramapo-Catskill Library System office and every other library in the area, clear New York State COVID-19 mandates, and Ms. Duffy's objections, Defendant McIntosh placed the Library's management staff and the public health at risk by, among other things, scheduling in-person work to perform tasks that could have been completed remotely with ease.

46. At this time, Defendant McIntosh blamed the COVID-19 mandates on "politics", namely, "the Democrats". McIntosh openly demeaned the mandate protections and ridiculed those that sought to comply with them.

47. Due to this hostile environment, even though Ms. Duffy believed that requiring management staff to come to work was dangerous to the public health, she went to the Library office for her scheduled shifts because she feared she would lose her job and be viewed as “not a team player” if she refused.

48. Due to Ms. Duffy's complaint, McIntosh then ordered Duffy to leave the Library building, stating that Ms. Duffy could not work. Defendant McIntosh told Ms. Duffy not to return to work, until July 2020 when Monroe Free Library opened up to the public again.

49. During this time, Ms. Duffy continued to research and recommend COVID-19 safety measures to Defendant McIntosh, who refused to even believe or acknowledge that the virus was a serious health and safety concern.

50. In one instance, Defendant Bezkorowajny, a close ally of Defendant McIntosh, laughed at Duffy stating, "I'm never going to wear a mask ... Oh no, no, no. There's no need for that."

51. During this time, Ms. Duffy procured PPE for the staff, and arranged for Plexiglass, and other safety measures in the Library to protect both employees and patrons.

52. On or about November 17, 2020, Ms. Duffy made numerous suggestions as to how to safely operate the library during the pandemic, including providing staff with detailed instructions on how to properly use PPE, recording a PPE instructional video and establishing an infectious disease policy/protocol for the library. Defendant McIntosh ignored all of Ms. Duffy's suggestions and said they were unnecessary.

53. On or about November 19, 2020, Defendant McIntosh provided a pandemic plan to type and provide to the Board of Trustees. McIntosh did not discuss the pandemic plan or seek any input from Ms. Duffy, despite Duffy's suggestions to implement it months prior.

54. These COVID-19 safety precautions and suggested safeguards, that would only serve to benefit the staff and patrons of the library, further caused Defendants McIntosh and Bezkorowajny to alienate Ms. Duffy.

55. Due to her opposition to Defendants McIntosh and the Monroe Free Library's violations of New York State mandates, Ms. Duffy lost opportunities for work experience that would have bolstered her qualifications for an Executive Director position even more.

56. Defendant McIntosh began excluding Ms. Duffy from usual library operations, and denied her opportunities to work on the projects and tasks she otherwise would have been included in.

57. For example, when it came time to work on the New York state annual report, an essential report that McIntosh had previously assigned to Duffy, McIntosh instead completed the report with other management staff refusing to include Duffy.

58. During this time Defendant McIntosh continued to freeze out Duffy from library operations and valuable work opportunities, communicating with her as little as possible, and preventing her from being able to demonstrate her capability and fitness for the open Executive Director position. This would continue through McIntosh's retirement on April 30, 2021.

59. After the COVID-19 incidents, Ms. Duffy did not raise any other complaints regarding safety restrictions and the Library's failure comply with New York State mandates due to fear of losing her job.

The Search for a New Executive Director

60. On October 19, 2020, at a Board of Trustees meeting, the forthcoming retirement of Defendant McIntosh was discussed. At that meeting, Ms. Duffy first expressed her interest to the Board in applying for the position of Executive Director. Duffy had voiced this prior to others at the Library, including to Defendants McIntosh and Bezkorowajny.

61. In about January 2021, the Defendant Board of Trustees formed a Director Search Committee tasked with assisting in the hiring of a new Executive Director (the "Director Search

Committee”). The Director Search Committee was comprised of Defendant Shanley (President), Charles LeViseur (Vice-President), Casey Auerbach (Treasurer), Carol Connell Cannon (Search Committee Chair), Barbara Cullum (Secretary), and Gil Goetz.

62. The act of forming a Director Search Committee and engaging in a selection process had not been carried out by the Board of Trustees when Defendant McIntosh was chosen as the Executive Director years earlier.

63. On January 14, 2021, the Director Search Committee posted a job advertisement for the Executive Director position. That same day Ms. Duffy submitted her resume and references for the Executive Director job application.

64. While Defendant McIntosh was not on the Director Search Committee, McIntosh drafted the job advertisement for the Executive Director position, reviewed the resumes received, watched the applicant interviews via Zoom, and closely advised Board of Trustees members regarding candidates and selection.

65. The Director Search Committee received seven applications for the position of Executive Director.

66. Ms. Duffy’s first interview for the position of Executive Director took place via Zoom on March 15, 2021. Duffy completed a second interview in person on April 7, 2021.

67. Ms. Duffy’s interviews went well. As a result she was chosen as a final candidate for the Executive Director position, along with one other candidate.

68. Ms. Duffy was 61 years old when she applied for the Executive Director position. The other final candidate was 35 years old.

69. Unknown to Ms. Duffy, during the Executive Director selection process and during the Board of Trustee's deliberations to choose an Executive Director, Defendants

McIntosh, Shanley (as President of the Board of Trustees), and Bezkorowajny had published and/or facilitated in the ongoing dissemination of defamatory, reckless, disparaging, false and unsubstantiated statements about Ms. Duffy and her character. Such statements included, but are not limited to that Ms. Duffy “shouldn’t be trusted”, that she “went behind [McIntosh's] back to get a raise”, that her raise “threw the library's [] budget into a turmoil”, that she was “not a team player”, that “during COVID-19 she never came out of her office”, that she “hid in her office”, that she “was against paying staff” during COVID-19, and various derogatory comments about her abilities, reputation and age.

70. For example, during the early onset of the COVID-19 pandemic, the Board of Trustees had resolved to continue to pay office staff their salaries during the New York State shutdown mandate. Government programs, including the Federal Employer Retention Credit under the CARES Act (“ERTC”) allowed for companies to retain their staff/payroll operations. By reason of Duffy’s diligent efforts to research and secure ERTC, Monroe Free Library was able to qualify for a substantial tax credit and keep staff on payroll during the COVID-19 shutdown.

71. Defendant Bezkorowajny, however, had objected to the Library staff being paid. Ms. Duffy vocally disagreed with Bezkorowajny, confirming that the Board of Trustees had mandated it, and that the law allowed for it. Later, Duffy would learn from Library staff that in an effort to undermine trust in Duffy and cast blame on her, Defendant Bezkorowajny had falsely represented to staff about September 2020 (after Duffy had expressed her desire to advance to Executive Director) that “[Duffy] opposed staff being paid during the shutdown” and that “[Duffy] was upset that staff members were being paid”.

72. On about April 7, 2021, during the Board of Trustees Executive Director selection process, Defendant Bezkorowajny told members of the Board falsely that Ms. Duffy had "hid in her office" and that she "she never came out of her office" during COVID-19, mocking and demeaning her. Bezkorowajny also told the Board that Duffy was "not a team player" because of her COVID-19 efforts, and that she "can't make decisions". Upon information and belief, at this time Defendant Bezkorowajny also repeated her falsehood that Duffy had opposed paying Library staff during the COVID-19 shutdown and attacked her character.

73. Other defamatory statements centered around Ms. Duffy's earlier request for a raise. Throughout 2014-2015 Duffy had been instrumental in facilitating a major construction project on the Library's property. Her work was substantial, requiring significant time, effort and skill, well beyond her job responsibilities. Upon completion of the project, in or about June 2016, Duffy asked Defendant McIntosh about a pay raise.

74. At this time, Defendant McIntosh told Duffy that if she wanted a raise there was nothing McIntosh could do, but that she should request a raise from the Board of Trustees. Per McIntosh's instructions, Duffy formally requested a pay raise from the Board of Trustees. On about June 29, 2016, the Board of Trustees voted unanimously to approve the raise. During that same calendar year, however, McIntosh did not receive a raise. That year the Library's budget had a surplus of approximately \$50,000.00.

75. On about April 7, 2021, during the Board of Trustees Executive Director selection process, Defendant McIntosh told members of the Board the falsehood that Ms. Duffy had improperly "went behind [McIntosh's] back" to receive a pay increase, and that Duffy "was not a team player", insinuating that Duffy was thus dishonest, untrustworthy and unscrupulous. McIntosh also stated to the Board that Duffy's pay increase "threw the library's already

calculated budget into a turmoil, with that money having to be taken from the materials and programming lines." This was completely false. These materially false statements directly and negatively impacted Ms. Duffy's professional abilities, credibility and trustworthiness.

**The Board of Trustees Meets
to Choose the New Executive Director**

76. On April 11, 2021, *prior* to the vote by the Defendant Board of Trustees, the Board President, Defendant Shanley, called Ms. Duffy at home to notify her that the Director Search Committee had already selected the other final candidate for the Executive Director position.

77. On April 12, 2021, the Board of Trustees held a meeting via Zoom.

78. At the April 12, 2021 Board of Trustees meeting, Diane Egan, a member of the Board, spoke openly and repeatedly about Monroe Free Library's desire to "go younger" for positions on the Board of Trustees.

79. While discussing potential candidates for another open position at Monroe Free Library, Ms. Egan said of one candidate "He doesn't fit our demographic if we're looking for younger people."

80. When asked to clarify what she had said, Ms. Egan stated, "If we're looking to go younger, he doesn't fit."

81. Another Board Member—who was 85 years old— expressed that he was offended by the "going younger" comments, and told Ms. Egan that she was "treading on thin ice."

82. Even after this admonishment, Ms. Egan persisted, discussing further the candidate's qualifications and saying "But like I said, if we're looking to go younger..." before she was stopped again by the 85 year-old Board Member.

83. This exchanged elicited laughs from Defendant Shanley and Board Member Gil Goetz.

84. Following this exchange, another Board Member stated in a joking tone, “Alright, we’ll have no age discrimination here.”

85. At this meeting a Board Member would abstain from the vote to confirm the choice of Executive Director to avoid any legal liability arising from the “going younger” comments.

86. Ms. Duffy and six of her family and friends witnessed these ageist comments.

87. This was not the first time, however, that Ms. Duffy had heard ageist comments at the Monroe Free Library. For example, on or about November 20, 2020, Defendant Bezkorowajny asked Ms. Duffy why she sought the Executive Director position and that she presumed Duffy was rather preparing for retirement. Defendant Bezkorowajny was over 74 years old when this comment was made and did not retire until she was 75 years old. Defendant McIntosh was 70 years old when she retired the following year.

88. Ms. Duffy had also heard other ageist comments made by Defendant McIntosh, Defendant Bezkorowainy, and other management at Monroe Free Library.

89. On September 16, 2020, when discussing a new building project with Defendant McIntosh, McIntosh told Duffy she is too tired and has no interest being involved in a new building project. She then asked Duffy how old she was. When Duffy told McIntosh that she was only 60 years old, McIntosh responded that Duffy would be getting too “tired” as well soon.

The Board Decision

90. On April 12, 2021, the Board of Trustees by motion voted to accept the recommendations of Defendant McIntosh and of the Director Search Committee and hire the younger candidate for the position.

91. In addition to the Board member that had decided to abstain, on April 9, 2021, just prior to the vote, a Board Member had resigned due to the “politics” she saw going on with the selection of candidates for the Executive Director position.

92. On April 13, 2021, the entire Monroe Free Library was notified by Defendant McIntosh that the selected candidate accepted the position.

93. Shocked and confused by the Board's decision, Ms. Duffy requested a meeting with the Board of Trustees to discuss why she was not chosen for the position. Duffy's request to discuss the denial of her promotion, which she had worked nearly 8 years to achieve, was refused by the Board of Trustees President, Defendant Shanley.

94. Duffy's request for an explanation was again made to the Board of Trustees in writing on July 12, 2021. The Board refused to respond to Duffy's request.

95. Just prior to the Board vote, a Board Member had told Ms. Duffy that the hiring and selection process for the position had been “political” since the beginning.

96. On April 15, 2021, Defendant McIntosh stated to Ms. Duffy that she did not support her for the position of Executive Director because Duffy had objected to McIntosh's insistence that management staff work in-person at the Library during the government mandated COVID-19 shutdown.

97. Ms. Duffy had six references connected to her application for the Executive Director position while the other applicants only submitted three or fewer references. One of Ms. Duffy's references, a member of the previous Board of Trustees that Defendant McIntosh had

significant and consistent disagreements with, was disqualified from being a reference for Ms. Duffy for unspecified reasons.

98. Ms. Duffy's resume fulfilled the job advertisement requirements while the candidate that was ultimately selected by Director Search Committee did not meet the job advertisement requirements or possess the requisite certification.

99. Many of Ms. Duffy's references came from her superiors or colleagues at Monroe Free Library, attesting to her specific qualifications at the Monroe Free Library.

100. The job advertisement for the Executive Director position specifically listed experience at a public library as a requirement. Ms. Duffy has 17 years of experience at Monroe Free Library, a public library. The candidate that was selected for the Executive Director position however, has no experience at a public library and only previous experience as an academic librarian. Academic librarians customarily do not assist in the financial management of a library in the same way public librarians customarily do. The Executive Director at Monroe Free Library has numerous financial responsibilities relating to the Library's banking, auditing and budgeting.

101. All New York libraries are required to comply with Education Department Regulations (8 CRR-NY § 90.8) governing the minimum qualifications for library director.

102. Pursuant to 8 CRR-NY § 90.8(a): "A library which is not a member of a public library system and serves a population of 5,000 or more shall employ as director and in all other professional librarian positions only persons who hold the public librarian's professional or provisional certificate or a certificate of qualification. The library shall employ in all other professional librarian positions only persons who hold the public librarian's professional positions or provisional certificate, a certificate of qualification or a conditional certificate." It

also states that: "Failure by the trustees of any registered library to meet these requirements or observe these regulations shall be deemed a valid reason for the rescinding or suspension of registration." 8 CRR-NY § 90.8(c).

103. The job advertisement for the Executive Director position listed “Possession of Public Librarian Certificate” as a requirement for the Executive Director position, which is required by law, specifically 8 CRR-NY § 90.8. The candidate who was selected did not possess the New York State Public Librarian Certificate and was not listed in the Public Librarian Certificate database. Ms. Duffy, however, has held the Public Librarian Certificate since May 2013.

104. On or about April 15, 2021, Ms. Duffy told Defendant McIntosh that the selected candidate did not have the proper certifications. Defendant McIntosh replied “Mary why do you want to be a director? You have a nice little job here. You wanted to retire at 62.”

105. To maintain her certification, Ms. Duffy has fulfilled her first five-year, 60-hour continuing education credits requirement, and she is currently working on the second five-year 60 credit CE requirement.

106. The candidate selected for the Executive Director position lacked the qualifications for the job, while Ms. Duffy—who has served at the Monroe Free Library for almost two decades—had all of the qualifications and more.

107. While she lacked qualifications for the job, the candidate who was selected was 35 years old— 26 years younger than Ms. Duffy.

108. Ms. Duffy lost a significant career opportunity when she was denied the Executive Director position. Library Directorships are not vacated often, and Ms. Duffy will most likely never have another opportunity to become Executive Director at a library in Monroe,

New York. For example, the previous Executive Director at Monroe Free Library held the position for over 30 years. It is common for libraries to fill Directorship vacancies from within.

109. By excluding Ms. Duffy from library operations, the Defendants also disadvantaged Duffy as a candidate for any Executive Director position.

110. Defendants have continued to harm Duffy by, among other things, decreasing her duties and responsibilities at the Library. By example, the task of book ordering was re-assigned from Ms. Duffy to the reference department.

111. In about February 2022, Ms. Duffy's duties and abilities to maintain and post to social media accounts for the Monroe Free Library, which are used to promote activities in the library, library related content and general activities in the Hudson Valley, were removed.

112. In one instance, a special meeting regarding opening programs to Ms. Duffy's scheduled day off was intentionally moved, directly impacting her ability to contribute to upcoming programs at the library. For the previous 8 years as Assistant Director these meetings were not held on Duffy's day off.

COUNT I
Violation of N.Y. Lab. Law § 740's
Prohibition Against Retaliation
[Against Defendants]

113. Plaintiff repeats and realleges paragraphs 1 through 112 hereof, as if fully set forth herein.

114. The Monroe Free Library was required to safely operate the Library during the COVID-19 pandemic, including providing safety measures to protect both employees and patrons, providing staff with detailed instructions on how to properly use PPE, and establishing an infectious disease policy/protocol for the Library.

115. The New York State COVID-19 lockdown mandates required all non-essential employees to stay home.

116. Despite these mandates, Defendants required management staff to work in-person from March 2020 to July 2020.

117. Defendants' requirement that management staff work in-person during the government mandated shutdown violated the New York State COVID-19 mandates.

118. Defendants' lax and non-existent COVID-19 safety measures violated New York State and federal law.

119. Defendants' requirement that management staff work in-person during the government mandated shutdown, and lax and non-existent COVID-19 safety measures, prior to vaccines being available to lessen the risk of transmission of COVID-19, presented a substantial and specific danger to the public health because group gatherings indoors increase the spread of the COVID-19 virus, which has a high fatality rate and extremely high rate of transmissibility.

120. Duffy raised objections to Monroe Free Library's practice of requiring management staff to work in-person to Defendant McIntosh, her supervisor and the Executive Director of Monroe Free Library.

121. Duffy also raised objections to Monroe Free Library's lax and non-existent COVID-19 safety measures, to Defendant McIntosh, her supervisor and the Executive Director of Monroe Free Library.

122. At all times, Duffy had a reasonable belief that the Defendants were violating local, state and federal laws, and she reported those violations to her supervisor, as alleged hereinabove.

123. By reason of Duffy notifying Defendants of its unlawful practices, the Defendants took retaliatory measures against Duffy. These retaliatory measures included, but are not limited to: disallowing Duffy from working her scheduled shifts from April 2020 to July 2020; excluding Duffy from valuable work opportunities and experience; isolating, marginalizing and ostracizing Duffy; making false and libelous accusations about Duffy's character; and by sabotaging Duffy's job and promotion to Executive Director adversely impacting Duffy's current and future employment.

124. By excluding Duffy from library operations, Defendants also disadvantaged Ms. Duffy as a candidate for any Executive Director position and sabotaged her qualifications.

125. By disallowing Duffy from working her scheduled shifts from April 2020 to July 2020; excluding Duffy from valuable work opportunities and experience; isolating, marginalizing and ostracizing Duffy; making false and libelous accusations about Duffy's character; and by sabotaging Duffy's job and promotion to Executive Director adversely impacting Duffy's current and future employment, Defendants violated the N.Y. Lab. Law § 740(e) prohibition against retaliation for disclosing an illegal practice of an employer that presents a substantial and significant danger to the public health to a supervisor.

126. Defendant McIntosh confirmed the same when she told Ms. Duffy that she did not support Ms. Duffy for the position of Executive Director because Ms. Duffy had objected to her decision to require management staff to work in-person and because of her behavior during the COVID-19 pandemic.

127. By revoking support for Ms. Duffy's promotion to Executive Director and excluding her from library operations, Monroe Free Library, by and through Defendant McIntosh, Defendants retaliated against Ms. Duffy for objecting to Monroe Free Library's illegal

practice of requiring management staff to work their shifts in-person during the government mandated shutdown, in violation of N.Y. Lab. Law § 740(e) prohibition against retaliation for disclosing to a supervisor an illegal practice of an employer that presents a substantial and significant danger to the public health.

128. At all times, Defendants' actions were willful, malicious, and wanton.

129. As a direct and proximate result of such retaliation, Plaintiff Duffy has been damaged in a sum according to proof.

130. Plaintiff requests all available relief under N.Y. Lab. Law § 740 including (i) injunctive relief; (ii) promotion to Executive Director; (iii) compensation for lost wages and benefits, with interest; (iv) a civil penalty of up to \$10,000 for each violation; (v) punitive damages; and (vi) reasonable costs and attorneys' fees associated with bringing this action.

COUNT II
Violation of NYSHRL Prohibitions
Against Age Discrimination
[Against Defendants]

131. Plaintiff repeats and realleges paragraphs 1 through 130 hereof, as if fully set forth herein.

132. Ms. Duffy was 61 years old and qualified for the Executive Director position when Defendants wrongfully denied her the promotion to the position.

133. Defendants made discriminatory comments regarding age to Duffy, her co-workers, and at least six others who were in attendance at the April 12, 2021, Board meeting.

134. During its decision-making meeting, the Board of Trustees explicitly discussed its desire to hire younger candidates regardless of their qualifications.

135. The conduct described above demonstrates that Duffy's age was the but-for cause of denying her the Executive Director position.

136. Given that Duffy was qualified for the position and the ultimately selected candidate was not qualified, it is evident that if Duffy had been 35 years old like the selected candidate, she would not have been passed up for the Executive Director position.

137. Defendants' actions violate New York State Human Rights Law, N.Y. Executive Law §§ 290 to 301's prohibitions against age discrimination.

138. By the conduct described above, Defendants have discriminated against and/or permitted and/or acquiesced to the discrimination of Plaintiff on the basis of her age in violation of the NYSHRL by denying her promotion, creating and/or acquiescing to a hostile work environment, and failing to address age discrimination.

139. As a result of Defendants' unlawful discriminatory actions, Duffy also fears she may be wrongfully terminated because of her age and for protesting Defendants' blatant age discrimination in the hiring process.

140. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, damages, including but not limited to future lost wages and benefits, suffered economic loss, loss of enjoyment of life, damage to her reputation, emotional distress, and the costs of bringing this action.

COUNT III

Defamation

[Against Defendants McIntosh, Bezkorowajny and Shanely]

141. Plaintiff repeats and realleges paragraphs 1 through 140 hereof, as if fully set forth herein.

142. As set forth by the conduct described above, Defendants McIntosh, Bezkorowajny and Shanely, published and/or facilitated in the ongoing dissemination of defamatory, reckless, disparaging and unsubstantiated statements resulting in damage to Plaintiff's reputation and loss

of career opportunity, including the denial of Plaintiff's advancement to the position of Executive Director of the Monroe Free Library.

143. Such statements were intended as statements of fact and not opinion.

144. The Defendants' dissemination of information they knew to be false directly and negatively impacted Plaintiff's reputation among the staff and Board of Trustees.

145. Had the Defendants not disseminated knowingly false statements that negatively impacted Plaintiff's professional reputation Plaintiff would not have been passed up for the Executive Director position.

146. Plaintiff is informed and believes that Defendants, by the described acts, conspired to, and in fact, did negligently, recklessly, and intentionally cause excessive and unsolicited internal and external publications of defamation, of and concerning Plaintiff, to third persons and the community, and/or with a failure to investigate adequately or verify purported facts underlying the defamatory statements.

147. Upon information and belief, the aforementioned statements were made, published and republished, to first cause, and then justify, the wrongful and illegal acts against Plaintiff.

148. Upon information and belief, despite Plaintiff's request for information as to the Board of Trustees' decision on two separate occasions, the Defendants willfully and wrongfully withheld and concealed information that it was obligated to release, that included facts material to Plaintiff's claims herein.

149. The aforementioned publications by Defendants were outrageous, negligent, reckless, intentional, and maliciously published and republished by the Defendants, and each of

them, and did directly injure Plaintiff and Plaintiff's personal, business, and professional reputation.

150. Plaintiff is informed and believes that the negligent, reckless, and intentional publications by Defendants were and continue to be, foreseeably published and republished by Defendants and their recipients in the community.

151. As a proximate result of the publication and republication of these defamatory statements, Plaintiff has suffered injury to her personal, business and professional reputation including suffering embarrassment, humiliation, severe emotional distress, shunning, anguish, fear, loss of employment, and employability, and significant economic loss in the form of lost wages and future earnings, all to Plaintiff's economic, emotional, and general damage in an amount according to proof.

152. Defendants committed the acts alleged recklessly, maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, for an improper motive amounting to malice (as described above), and which abused and/or prevented the existence of any conditional privilege. All actions herein alleged were known, ratified and approved by Defendants. Plaintiff thus is entitled to recover, in addition to compensatory damages, punitive and exemplary damages from Defendants, for these wanton, obnoxious, and despicable acts in an amount according to proof at time of trial.

COUNT IV
Declaratory Judgment

153. Plaintiff repeats and realleges paragraphs 1 through 152 hereof, as if fully set forth herein.

154. At all times hereinafter mentioned, the duties and responsibilities of the Board of Trustees were set forth in the Monroe Free Library Articles of Incorporation, the Monroe Free

Library ByLaws, the N-PCL, Education Law, the New York State Board of Regents, the Handbook For Library Trustees, Education Department Regulations (8 CRR-NY § 90.8), and applicable federal and state statutes.

155. According to the Handbook For Library Trustees: "The most important responsibility of a library board of trustees is to select a qualified library director who can work effectively with the Board, professionally manage the institution and reflect the ideals of the institution and the community it serves. All libraries are required to comply with Education Department Regulations (8NYCRR) § 90.8 governing the minimum qualifications for library director." (Pg. 45).

156. According to the Handbook For Library Trustees: "Duty of Care - A trustee or board member must act in good faith and exercise the degree of diligence, care and skill that an ordinary prudent individual would use under similar circumstances in a like position." (pg. 15).

157. At all times a Board member must take steps to be informed, and act in good faith with the best interest of the Library in mind.

158. By the conduct described above, members of the Board of Trustees of the Monroe Free Library and the Selection Committee breached their duties of care and loyalty by failing and/or refusing to consider and recommend Plaintiff, a highly qualified candidate with an exceptional 17 year employment record, for advancement to the position of Executive Director of the Monroe Free Library.

159. By the conduct described above, members of the Board of Trustees of the Monroe Free Library and the Selection Committee recklessly and wrongfully denied Claimant's advancement to the position of Executive Director by failing to properly execute their duties to adequately investigate candidates for that critical position, by reliance upon defamatory, reckless,

disparaging and unsubstantiated statements regarding the Plaintiff, and by voting to appoint another less qualified individual to the position of Executive Director, a misuse and/or waste of tax payer funds.

160. Wrongful and reckless acts of the Board of Trustees of the Monroe Free Library and the Selection Committee include breach of rights of employment and contract, breach of fiduciary duty and duty of care, violation of and failure to comply the Monroe Free Library ByLaws, the N-PCL, Education Law, the New York State Board of Regents, the Handbook For Library Trustees, Education Department Regulations (8 CRR-NY § 90.8), and applicable federal and state statutes.

161. By the conduct described above, members of the Board of Trustees of the Monroe Free Library and the Selection Committee acted in an illegal, arbitrary and capricious manner, and beyond the scope of the Defendant Board's authority, and any such appointment is null and void and/or must be invalidated. As such, a justiciable controversy is presented which requires adjudication by this Court.

162. As a result of the foregoing, Plaintiff is entitled to a Declaratory Judgment that:

- (a) Defendant Board members' reliance on statements or opinions of the Selection Committee related to the Board's appointment of Plaintiff as Executive Director was misplaced and unwarranted;
- (b) Defendant Board members did not rely on reliable opinions, statements or advice;
- (c) Defendant Board members discharged their duties recklessly and/or in bad faith; and
- (d) Defendant Board members' actions constituted wrongful, discriminatory, retaliatory and/or unconscionable conduct.

163. Plaintiff also seeks such consequential and other relief so as to effectuate and enforce the requested judicial declaration.

164. Plaintiffs have no adequate remedy at law if a Declaratory Judgment is not issued as requested herein.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment:

- A. Holding that Defendants have violated Plaintiff's rights under N.Y. Lab. Law § 740, N.Y. Executive Law §§ 290 to 301 and Counts III through IV;
- B. Awarding Plaintiff promotion to Executive Director;
- C. Awarding Plaintiff damages for lost career opportunity;
- D. Awarding Plaintiff for her past loss of wages, plus interest;
- E. Awarding Plaintiff compensatory damages;
- F. Awarding Plaintiff pre-judgment and post-judgment interest to the maximum amount permitted by law;
- G. Awarding Plaintiff all costs and reasonable attorneys' fees incurred in connection with this action;
- H. Enjoining Defendants from further discrimination against Plaintiff;
- I. Enjoining Defendants from further retaliation against Plaintiff;
- J. Awarding Plaintiff punitive damages;
- K. Granting a civil penalty to Defendants of up to \$10,000 for each violation;
- L. Providing such additional or alternative relief as the Court deems just and proper

JURY DEMAND

Plaintiff demands a trial by jury on all claims properly triable by a jury.

Dated: New York, New York

May 9, 2022

Respectfully submitted,

LOPRESTI, PLLC

By: /s/ Anthony A. LoPresti

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Attorneys for Plaintiff

Mary Duffy

AFFIRMATION OF SERVICE

ANTHONY A. LoPRESTI, an attorney duly admitted in the State of New York, hereby affirms the following upon penalty of perjury:

I am an attorney for Plaintiff Mary Duffy, and on May 9, 2022, I served a true and correct copy of the attached Complaint upon MONROE FREE LIBRARY; BOARD OF TRUSTEES OF THE MONROE FREE LIBRARY; MARILYN J. MCINTOSH; PATRICIA C. SHANLEY; and CAROL BEZKOROWAJNY in the following manner: by electronically filing said papers via NYSCEF and thereby effecting electronic service pursuant to the Uniform Rules for the Trial Courts Section 202.5-b(f)(2)(ii) to the address of counsel of record, at:

Goldberg Segalla
Charles Lazo, Esq.
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Scott R. Green, Esq.
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Dated: New York, New York
May 9, 2022

/s/ Anthony A. LoPresti
Anthony A. LoPresti