

Sharpton says powerful 1199 SEIU **must do better** investing in minority-owned funds

NEW YORK POST

**SEIU 1199** refuses to put its money where its social-justice mouth is

NEW YORK POST

Ultra-Progressive union blasted for 'hypocrisy and **selling out members**'

NEW YORK POST

October 2023

# ROTTEN APPLE?

**Discrimination Allegations Plague Prominent SEIU Local**

# Rotten Apple? Discrimination Allegations Plague Prominent SEIU Local

## Executive Summary

1199 SEIU United Healthcare Workers East (henceforth 1199 SEIU) is one of the largest local unions in the country and is part of the Service Employees International Union (SEIU). The union mega-local has more than 400,000 members and is the largest local in the SEIU. Based in New York City, 1199 SEIU represents health care workers all over the East Coast, stretching from Florida to Massachusetts.

But the union is not without controversy. Recently, the *New York Post* reported on the union's lack of investment in minority-owned firms. In addition to this alleged lack of minority investments, 1199 SEIU and the 1199 SEIU National Benefit Fund have recently faced lawsuits that allege the groups have engaged in discriminatory behavior by firing employees over race, sex, disabilities, and ongoing medical issues. In an explosive lawsuit settled earlier this year, a former employee claimed to have been fired from the 1199 SEIU National Benefit Fund due to a racist supervisor.

The employee claims his supervisor called minority employees “black clowns and n\*\*\*\*\*s” and “misfit nappy heads.”

The Fund allegedly brushed off the employee’s complaints about his supervisor’s racism.

1199 SEIU National Benefit Fund claimed that the Plaintiff had no evidence to back up his allegations against the supervisor and stated that a complaint was never made to human resources about any racism. Despite these claims, the case was settled just a little over a month after the Defendant’s motion to dismiss.

In another recently settled case (2020), an employee alleged that she suffered pervasive sexual harassment at the 1199 SEIU by a supervisor. She alleged that she was fired from the union after denying his advances.

Once again, the union allegedly did nothing when it heard about the sexual harassment the employee claimed to face.

The 1199 SEIU stated that if any of the alleged conduct did occur, it was welcomed. The Defendant claimed the Plaintiff was fired on account of her poor work performance.

1199 National Benefit Fund also faces several ongoing lawsuits that allege two employees were fired over a medical issue and an ongoing disability.

1199 National Benefit Fund claims the Plaintiff in the disability case (*Raymond v. 1199 SEIU National Benefit Fund*) was properly accommodated and was not terminated for any disability. The other medical case (*Gerard v. 1199 SEIU National Benefit Fund*) was just filed, and the Defendant has not had time to respond.

Below is a list of highlights from the report:

***Mincey v. 1199 SEIU National Benefit Fund***

- Former employee claims to have been fired/retaliated against by a racist supervisor for reporting her behavior to human resources.
- The former employee alleged that Black employees were referred to as “black clowns and n\*\*\*\*s,” “misfit nappy heads,” and “animals” that need to be “put down.”
- 1199 SEIU National Benefit Fund stated the Plaintiff had no evidence to back up his claims.

***Luciano v. 1199 SEIU***

- Former employee alleged that she suffered a serial pattern of sexual harassment by her supervisor at the union.
- The former employee alleged that after denying her supervisor’s advances, she was fired, and the union did nothing in response to her sexual harassment claims.
- Defendant responded by arguing the alleged conduct was welcomed by the plaintiff and the case was settled soon after.

**Ongoing Lawsuits**

- A former employee of the 1199 SEIU National Benefit Fund alleges that he was fired after suffering from a severe medical disability. Defendant stated that the Plaintiff was not fired over any disability and was properly accommodated for his condition.
- A former employee of the 1199 SEIU National Benefit Fund claims to have been fired after suffering from health issues after contracting COVID-19. The former employee claims the union failed to accommodate his physician’s medical advice. The case was just filed, and the Defendant has not had time to answer the complaint.

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## Discriminatory Investing

### Investment Issues

#### National Benefit Fund

- **1199 SEIU has come under fire for the lack of minority investments in several of its funds.**

- According to a Sept. 14, 2023, *New York Post* article:

One of New York state’s most powerful unions is being accused of hypocrisy by refusing to invest its billions in diverse businesses and of selling out underpaid workers — while aiming a gusher of cash at progressive causes.<sup>1</sup>

- **The *Post* reported that one of the group’s funds, the National Benefit Fund, has more than 17 billion invested in major Wall Street firms.**

- According to a Sept. 14, 2023, *New York Post* article:

But records inspected by The Post show that one of those eight funds alone, the National Benefit Fund, has more than \$17 billion invested with major Wall Street firms including Blackstone and Apollo Global Management, Beverly Hills-based Platinum Equity, and a series of other hedge funds and private equity funds.

“They are really not supporting their diverse base in terms of their investment strategy,” said Robert Greene, CEO of the National Association of Investment Companies, the industry association for diverse-owned private equity firms and hedge fund. “They have very little invested with minority-run investment funds.”<sup>2</sup>

#### Al Sharpton Criticizes SEIU

- **Al Sharpton blasted 1199 SEIU for its failure to invest in minority-run investment funds.**

- According to a Sept. 16, 2023, *New York Post* article:

Harlem civil rights leader Al Sharpton on Saturday slammed one of the most powerful unions in New York for its failure to direct its assets into minority-run investment funds.

During his weekly broadcast from his National Action Network headquarters in Harlem, Sharpton said he’s concerned that the influential 1199 Service

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<sup>1</sup> Isabel Vincent, “Ultra-progressive union blasted for ‘hypocrisy and selling out members,’” [New York Post](#), Sept. 14, 2023

<sup>2</sup> Isabel Vincent, “Ultra-progressive union blasted for ‘hypocrisy and selling out members,’” [New York Post](#), Sept. 14, 2023

Employees International Union Local is not investing in a way that reflects the diversity of its members, following an exclusive report by The Post about the union's hypocritical investment strategy.

"Across the board, unions and labor must do business in a way that reflects their politics, and I believe they will," Sharpton said.

"But I am going to make sure; we are going to sit down with them. I think it's important. I want the members of [NAN] and the members of unions to be assured that we are going to meet with [union presidents] in the next week or so. That's important."<sup>3</sup>

## Settled Lawsuits

### *Mincey v. 1199 SEIU National Benefit Fund*

#### Allegation(s)

- **In 2021, a former 1199 SEIU National Benefit Fund employee filed a lawsuit claiming the labor fund subjected him to a hostile work environment based on his race and fired him for opposing discriminatory practices.**

- According to the Feb. 5, 2021, Complaint:

2. Mr. Mincey (an African America (*sic*) male) claims that his former employers, Defendants (a nationwide labor-management fund), subjected him to a despicable and actionable hostile work environment on the basis of his race, retaliated against him for opposing discriminatory practices, and terminated his employment because of his race and/or in retaliation for engaging in protected activity.<sup>4</sup>

- **Mincey said he was complimented for being "very articulate" and was told most of the staff was Black, "slow and illiterate."**

- According to the Feb. 5, 2021, Complaint:

19. During his interview, Mrs. Kowalski (*sic*) complimented Mr. Mincey for being "very articulate" and then proceeded to give him an unsolicited overview of the racial/ethnic makeup of the staff, stating that the majority of them were black with "some sprinkles of Latino" and "no whites". She made sure to emphasize that the staff was slow and illiterate.<sup>5</sup>

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<sup>3</sup> Mincey v. 1199 SEIU National Benefit Fund, [United States District Court](#), Feb. 5, 2021

<sup>4</sup> Mincey v. 1199 SEIU National Benefit Fund, [United States District Court](#), Feb. 5, 2021

<sup>5</sup> Mincey v. 1199 SEIU National Benefit Fund, [United States District Court](#), Feb. 5, 2021

➤ **Mincey claimed he was told it would be “us against them.”**

- According to the Feb. 5, 2021, Complaint:

22. Finally, Mr. Manganello told Mr. Mincey that if he was offered the job it would be “us against them,” referring to the African American staff that he spent hours speaking ill of to Mr. Mincey.<sup>6</sup>

➤ **Mincey claimed that his supervisor called minority workers “animals” and that they needed to be “put down.”**

- According to the Feb. 5, 2021, Complaint:

25. On or about August 14, 2015, staff employees wanted to file a grievance against Mrs. Kowalski (*sic*) and Mr. Manganello for being subject to a hostile work environment. Mrs. Kowalski (*sic*) then called Mr. Mincey into her office and she told him “See, I told you these animals don’t need to be tamed, they need to be put down, they are all stupid and malcontents.” Mr. Mincey replied that she shouldn’t use such offensive, racist remarks when talking about the African American staff. Mrs. Kowalski (*sic*) became angry at Mr. Mincey for defending his fellow coworkers and told him that they urinated in her cup once.<sup>7</sup>

➤ **Mincey claimed human resources told him that everyone knew Kowalsky was racist, but she had “backing from the higher ups.”**

- According to the Feb. 5, 2021, Complaint:

29. On or about March 8, 2016, Mrs. Kowalski (*sic*) came into Mr. Mincey’s office, closed the door, and told him that whenever he walked past her door, he shouldn’t call her name because “you black people have harsh sounding voices and your voices are intimidating.” She then leaned into him and said, “I will fire you if you don’t comply.”

30. Mr. Mincey reported this incident to Jessica Bustimante from Human Resources, but she said, “We all know she’s racist, but she has backing from the higher ups and she is extremely evil.”

➤ **Mincey claims that Kowalsky threatened him by showing him pictures of “hung black men” and referred to Black office workers as “misfit nappy heads.”**

- According to the Feb. 5, 2021, Complaint:

31. On or about March 9, 2016, Mr. Mincey told Mrs. Kowalski (*sic*) that he had overheard people talking about kickbacks for the Fund and Mrs. Kowalski’s (*sic*) husband inappropriately getting a job with one of the Fund’s vendors. Mrs. Kowalski

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<sup>6</sup> Mincey v. 1199 SEIU National Benefit Fund, [United States District Court](#), Feb. 5, 2021

<sup>7</sup> Mincey v. 1199 SEIU National Benefit Fund, [United States District Court](#), Feb. 5, 2021

(*sic*) immediately called Mr. Mincey into her office and closed the door. Mrs. Kowalski (*sic*) then showed him pictures of hung black men with no bodies, while laughing and threatening him to watch himself because she was protected at the Fund and no one would believe anything he said. She then said, “Be careful, I run this show, not Larry [Mr. Manganello], or the misfit nappy heads.”<sup>8</sup>

➤ **Mincey claimed that Kowalsky said that she could get away with killing a person of color because she was “privileged.”**

- According to the Feb. 5, 2021, Complaint:

32. On or about April 20, 2016, Mrs. Kowalski (*sic*) told Mr. Mincey the story of Bernhard Goetz, a white Jewish man, who shot three black men on a subway in the 1990s and was found not guilty for these shootings. When Mr. Mincey asked her why she was telling him this story, she answered that, like him, she was Jewish and could get away with doing the same thing to any person of color because “I am privileged.”<sup>9</sup>

➤ **Mincey claimed that Kowalsky made derogatory comments about Black office workers and when human resources heard, he was told to ignore it.**

- According to the Feb. 5, 2021, Complaint:

33. On or about June 14, 2016, Mrs. Kowalski (*sic*) told Mr. Mincey that she wanted to be a “black clown” for Halloween, but all the employees around her were already “black clowns and n\*\*\*\*rs.” Upon hearing this despicable, racist vitriol, Mr. Mincey got up to leave her office, but Mrs. Kowalski quickly told him that if he opened the door, she would fabricate charges against him and get him fired. After the meeting concluded, Mr. Mincey reported this incident to Desiree Guyana from Human Resources, but she simply stated that it was her management style and to not pay attention to it.<sup>10</sup>

➤ **Mincey alleged that Kowalsky launched a campaign to get him fired.**

- According to the Feb. 5, 2021, Complaint:

34. From July to August 2016, Mrs. Kowalski (*sic*) realized that Mr. Mincey was not willing to take her abuse anymore and was continuously reporting her discriminatory remarks. As such, Mrs. Kowalski (*sic*) initiated an intense campaign to break Mr. Mincey’s spirit and get him fired. More specifically, she pretextually complained about his work performance, gave him a burdensome amount of work, took his staff away, gave him unfounded negative reviews, and had someone monitor his computer.

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<sup>8</sup> Mincey v. 1199 SEIU National Benefit Fund, [United States District Court](#), Feb. 5, 2021

<sup>9</sup> Mincey v. 1199 SEIU National Benefit Fund, [United States District Court](#), Feb. 5, 2021

<sup>10</sup> Mincey v. 1199 SEIU National Benefit Fund, [United States District Court](#), Feb. 5, 2021

- **Mincey claimed he was eventually terminated because of Kowalsky's vendetta against him.**

- According to the Feb. 5, 2021, Complaint:

38. Finally, as repeatedly promised by Mrs. Kowalski (*sic*), on June 27, 2017, the Defendant terminated Mr. Mincey for alleged job performance issues.<sup>11</sup>

### **Defendant's Response**

- **1199 SEIU National Benefit Fund claimed that the Plaintiff had no evidence that he was fired based on his race.**

- According to the March 30, 2023, Memorandum of Law:

Plaintiff's claim for discriminatory termination fails as a matter of law because he cannot establish that the circumstances surrounding his termination on June 30, 2017 give rise to an inference that he was terminated because he was Black. Instead, evidence establishes that Plaintiff's supervisor, Ms. Kowalsky, had been having problems with his work performance issues soon after he began employment with the Fund in 2015. See *supra* at 7-10, 13-14. There is well-documented evidence of those performance issues by Ms. Kowalsky, which is not in dispute.<sup>12</sup>

- **1199 SEIU National Benefit Fund claimed the Plaintiff was terminated because he was performing poorly.**

- According to the March 30, 2023, Memorandum of Law:

Plaintiff's supervisor regularly documented Plaintiff's work performance deficiencies in contemporaneous e-mails and memorandum. See *infra* at 7-10, 13-14. While Plaintiff may disagree with his supervisor's evaluation of his work, the evidence shows that the Fund terminated his employment because of his poor work performance. See *infra* at 7-10, 13-14. It is undisputed that Ms. Kowalsky shared her performance concerns with HR during the course of Plaintiff's employment with the Fund. See *infra* at 7-10, 13-14. Likewise, HR based its decision to terminate Plaintiff's employment solely because the Fund had lost confidence in him and his ability to meet the past and current needs of his department. See Hurley Aff. at ¶ 13, Exh. G. Thus, it is undisputed that the Fund has met its burden of proof with regard to the fact that it had a legitimate nondiscriminatory reason for terminating him.<sup>13</sup>

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<sup>11</sup> Mincey v. 1199 SEIU National Benefit Fund, [United States District Court](#), Feb. 5, 2021

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<sup>13</sup> Mincey v. 1199 SEIU National Benefit Fund, [United States District Court](#), March 30, 2023

➤ **1199 SEIU National Benefit Fund claimed there was no evidence to prove the allegations against Ms. Kowalsky.**

- According to the March 30, 2023, Memorandum of Law:

Much like Plaintiff's discriminatory termination claim, his hostile work environment claim also fails for several reasons. First, there is no evidence to prove that allegations made about Ms. Kowalsky occurred.<sup>14</sup>

➤ **1199 SEIU National Benefit Fund said that race had no part in the Plaintiff's human resources complaint.**

- According to the March 30, 2023, Memorandum of Law:

Here Plaintiff can point to no protected activity. The only event which Plaintiff appears to rely upon is his April 5, 2017 complaint filed with HR alleging that Ms. Kowalsky engaged in certain behavior, none of which was alleged to have been on the basis of Plaintiff's race. Without any more admissible evidence, Plaintiff cannot meet his burden to prove his prima facie case of retaliation and his retaliation claim should be dismissed.<sup>15</sup>

## **Outcome**

➤ **In 2023, Mincey's attorneys announced that both parties had settled the case in principle.**

- According to a May 15, 2023, Motion for Settlement:

We represent the Plaintiff in the above-referenced matter against 1199SEIU National Benefit Fund ("Defendant"). We write, with Defendant's consent, to advise the Court that the parties have settled the case in principle and to ask that all deadlines in this matter be adjourned sine die. In the next thirty days, the parties expect to finalize a settlement agreement and file the stipulation of dismissal.<sup>16</sup>

➤ **In August 2023, a motion was filed by the United States District Court Southern District of New York to dismiss the case since a settlement had been made.**

- According to the Aug. 21, 2023, Stipulation of Discontinuance:

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for Plaintiff, Lance Mincey and Defendant, 1199SEIU National Benefit Fund, that the above-entitled action is hereby dismissed with

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<sup>14</sup> Mincey v. 1199 SEIU National Benefit Fund, [United States District Court](#), March 30, 2023

<sup>15</sup> Mincey v. 1199 SEIU National Benefit Fund, [United States District Court](#), March 30, 2023

<sup>16</sup> Mincey v. 1199 SEIU National Benefit Fund, [United States District Court](#), May 15, 2023

prejudice against Defendant, 1199SEIU National Benefit Fund, without costs to either party as against the other.<sup>17</sup>

### **Luciano v. 1199 SEIU**

#### **Allegation(s)**

- **Plaintiff Luciano alleged that she was sexually harassed and retaliated against based on her gender while working for 1199 SEIU.**

- According to the Nov. 25, 2019, Complaint:

Plaintiff complains pursuant to Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (amended in 1972, 1978 and by the Civil Rights Act of 1991, Pub. L. No. 102-166) (“Title VII”) and the New York City Human Rights Law, (“NYCHRL”) seeking declaratory and injunctive relief and damages to redress the injuries Plaintiff has suffered as a result of being sexually harassed, harassed, discriminated against and retaliated against on the basis of her gender and objection to and complaints about sexual harassment.<sup>18</sup>

- **Plaintiff Luciano alleged that her direct manager, Defendant Rene Ruiz, was sexually harassing her.**

- According to the Nov. 25, 2019, Complaint:

16. Defendant Ruiz would frequently talk about his sex life and describe how many affairs he has had during his marriage. Defendant Ruiz described his marriage as permitting him to “double up,” which is the way he described having a mistress while being married.<sup>19</sup>

- **Luciano claimed that Ruiz created a hostile work environment by joking about sex.**

- According to the Nov. 25, 2019, Complaint:

19. Defendant Ruiz also created a work environment that was sexually hostile, frequently joking about sex and making sexual jokes.<sup>20</sup>

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<sup>17</sup> Mincey v. 1199 SEIU National Benefit Fund, [United States District Court](#), Aug. 21, 2023

<sup>18</sup> Luciano v. 1199 SEIU and Ruiz, [United States District Court](#), Nov. 25, 2019

<sup>19</sup> Luciano v. 1199 SEIU and Ruiz, [United States District Court](#), Nov. 25, 2019

<sup>20</sup> Luciano v. 1199 SEIU and Ruiz, [United States District Court](#), Nov. 25, 2019

➤ **Luciano alleged that Ruiz told her that they should have a sexual affair. Luciano responded by saying she wasn't comfortable and wanted to return to her previous position.**

- According to the Nov. 25, 2019, Complaint:

25. Defendant Ruiz then told Plaintiff Luciano that this was “like a bad marriage, but if we were married then you would have it really easy here.” He then suggested that Plaintiff Luciano and he “double up,” implying that they have a sexual affair.

26. Plaintiff Luciano immediately said “no” and said she would not date a man that was more than fifteen (15) years older than her. He then responded by claiming that he was joking.

27. Plaintiff Luciano then responded by saying that she was not comfortable and that she wanted to go back to her prior position.<sup>21</sup>

➤ **Luciano claimed that the Defendant threatened to terminate her based on her refusal to engage in an affair.**

- According to the Nov. 25, 2019, Complaint:

28. Defendant Ruiz then said that he could “make it seem like [she] don't work well with others,” implying that if she was not comfortable working with him and engaging in this affair with him that he could get her terminated.

29. Plaintiff Luciano responded by saying that he could not create the false characterization to which Defendant Ruiz responded by saying she did not get along with two (2) women in the office.<sup>22</sup>

➤ **Luciano alleged that she was sexually assaulted by Ruiz at a fundraiser.**

- According to the Nov. 25, 2019, Complaint:

31. A few weeks later at a fundraiser for Puerto Rico, Plaintiff Luciano was dancing on the floor when Defendant Ruiz approached her from behind and reached down onto her leg and attempted to grope Plaintiff Luciano by moving his hand up her skirt.

32. Plaintiff Luciano immediately slapped his hand away before he could complete his groping maneuver.<sup>23</sup>

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<sup>21</sup> Luciano v. 1199 SEIU and Ruiz, [United States District Court](#), Nov. 25, 2019

<sup>22</sup> Luciano v. 1199 SEIU and Ruiz, [United States District Court](#), Nov. 25, 2019

<sup>23</sup> Luciano v. 1199 SEIU and Ruiz, [United States District Court](#), Nov. 25, 2019

➤ **After the event, Ruiz informed the Plaintiff that he had extended her work probation and once again asked if she wanted to hook up with him.**

- According to the Nov. 25, 2019, Complaint:

34. In or around the end of June of 2018, Defendant Ruiz called a meeting with Plaintiff Luciano.

35. Defendant Ruiz started the meeting by asking if Plaintiff Luciano still wanted to move back to her old department. Defendant Ruiz then said that Plaintiff Luciano would have to first pass probation.

36. Plaintiff Luciano had, to her knowledge, passed probation as she was approximately eight (8) months into her new position and she had never been informed that the probation was extended.

37. Defendant Ruiz claimed that he had extended her probation.

➤ **Luciano allegedly told an SEIU vice president about the inappropriate behavior.**

- According to the Nov. 25, 2019, Complaint:

48. At the conference, Plaintiff Luciano spoke with Victor Rivera, a VP of another division for Defendant 1199 and informed him that she was not comfortable with Defendant Ruiz because of his inappropriate behavior.<sup>24</sup>

➤ **Luciano alleged that upon her return from the conference, she had an emotional breakdown at a meeting and told Ruiz's supervisor she feared him.**

- According to the Nov. 25, 2019, Complaint:

51. On or about August 13, 2018, Plaintiff Luciano met with Defendant Ruiz and Ms. Shapiro.

52. Plaintiff Luciano then asked if she was really on probation and Ms. Shapiro confirmed.

53. Plaintiff Luciano then reiterated that she was not comfortable in this position.

54. Plaintiff Luciano was emotionally distraught in this meeting as she began to cry.

55. Plaintiff Luciano then told her repeatedly that she needed to go back to her prior position.

56. The next day, Plaintiff Luciano approached Ms. Shapiro and told her that she was scared of Defendant Ruiz. Ms. Shapiro told Plaintiff Luciano that there was

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<sup>24</sup> Luciano v. 1199 SEIU and Ruiz, [United States District Court](#), Nov. 25, 2019

nothing to be afraid of and attempted to convince Plaintiff Luciano that everything would work out.<sup>25</sup>

➤ **Plaintiff alleged that Ruiz physically intimidated her inside of her cubicle and yelled at her.**

- According to the Nov. 25, 2019, Complaint:

58. Defendant Ruiz later approached Plaintiff Luciano in her cubicle. He came very close to her so that he physically lorded over her. He then asked her why she had not come back to his office, as he got even closer.

59. Defendant Ruiz was yelling at Plaintiff Luciano who began to have a severe emotional reaction to his attack.

60. Plaintiff Luciano repeatedly asked Defendant Ruiz to back away from her. She also told him that she was afraid of him and asked him to walk away at that moment so she could calm down.

➤ **Luciano claimed that after the confrontation with Ruiz, she was terminated from her position. Luciano says she reported Ruiz to human resources, but they took no action.**

- According to the Nov. 25, 2019, Complaint:

68. When Plaintiff Luciano went to Human Resources she read the letter and realized she was terminated.

69. Plaintiff Luciano asked Mr. Joseph about this and he confirmed that she was terminated.

70. Plaintiff Luciano then went into Human Resources and reported Defendant Ruiz's actions when he sexually harassed her, assaulted her, and attempted to coerce her into having a sexual relationship with him against her will.

71. Plaintiff Luciano had hoped that she would be moved to another department so that she could avoid Defendant Ruiz, however, now that she was terminated she realized that he had terminated her rather than allow her to remain at the office.

72. Plaintiff Luciano spoke with Human Resources, however, Defendant 1199 left the termination as it stood.<sup>26</sup>

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<sup>25</sup> Luciano v. 1199 SEIU and Ruiz, [United States District Court](#), Nov. 25, 2019

<sup>26</sup> Luciano v. 1199 SEIU and Ruiz, [United States District Court](#), Nov. 25, 2019

## Defendant's Response

- **Defendant stated that any alleged conduct was welcomed by the Plaintiff.**
  - According to the Feb. 11, 2020, Answer to Complaint:
    - 95. Any alleged conduct was welcomed by the Plaintiff.
    - 96. The Plaintiff did not, by her own words or conduct, indicate that the complained of behavior was in fact unwelcome.
    - 97. The Plaintiff willingly participated in the very conduct about which she now complains.
    - 98. The Plaintiff first raised the allegedly unwelcome conduct with any person at 1199 only after she was discharged from her position for valid business reasons unrelated to the alleged conduct or any alleged opposition to it.<sup>27</sup>
- **The Defendant also stated a variety of defenses in its answer to the complaint, the lines below list a few of these.**
  - According to the Feb. 11, 2020, Answer to Complaint:
    - 99. The alleged conduct was not sexual or was not based on sex.
    - 100. Defendant Ruiz's conduct toward Plaintiff was not based upon her sex or gender, and Plaintiff cannot demonstrate that sex or gender was the "but for" cause of any treatment toward her, including her discharge from employment with Defendant 1199.
    - 101. Defendants had valid business reasons for terminating Plaintiff's employment with 1199 which were unrelated to the alleged harassment or any alleged opposition by Plaintiff to harassment.
    - 102. The alleged conduct was not severe or pervasive enough to constitute a hostile work environment.
    - 103. The alleged conduct would not be offensive to a reasonable person.<sup>28</sup>

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<sup>27</sup> Luciano v. 1199 SEIU and Ruiz, [United States District Court](#), Feb. 11, 2020

<sup>28</sup> Luciano v. 1199 SEIU and Ruiz, [United States District Court](#), Feb. 11, 2020

## Outcome

- **In 2020, a mediator reported to the court that the case between *Luciano v. 1199 SEIU and Ruiz* had been settled.**

- According to the June 26, 2020, Order:

On June 25, 2020, the mediator reported to the Clerk of Court that this case has settled. Accordingly, it is hereby ORDERED that this action be conditionally discontinued without prejudice and without costs; provided, however, that within thirty (30) days of the date of this Order, the parties may submit to the Court their own Stipulation of Settlement and Dismissal.<sup>29</sup>

## Ongoing Lawsuits

### ***Raymond v. 1199 SEIU National Benefit Fund***

#### **Allegation(s)**

- **In 2020, the 1199 SEIU National Benefit Fund was sued for allegedly violating the Americans with Disabilities Act for terminating an employee for a disability and failing to accommodate his medical condition.**

- According to the Dec. 8, 2020, Complaint:

I was employed by 1199 SEIU NBF from 1988 until 2/6/19. I am a qualified individual with a disability under ADA Section 101. I've been diagnosed with chronic deep vein thrombophlebitis, requiring daily blood-thinning medicine. My doctor advised me to avoid prolonged sitting, squatting, or standing. When medicated and following my doctor's restrictions, I'm able to perform my job duties as an Outreach Coordinator (OC). The Extended drive I must make to get to some sites involves prolonged sitting. (Not all of the 30 or so OC-type jobs require driving). On 1/15/19, I got notice from the employer that they would not accommodate my doctor's restrictions. I asked for reconsideration and a chance to discuss accommodations, as stated in the employer's policy. My request was refused. The employer violated the ADA by (1) denying my request for reasonable accommodation, and (2) terminating my employment on 2/16/19 because of my disability. The employer knows that its actions were wrong because the actions were contrary to the employer's own policies. The employers own LTD carrier concluded that I could do my job with a simple accommodation. The EEOC concluded there is reasonable cause to believe that violations of the statute occurred. (See Attached).

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<sup>29</sup> Luciano v. 1199 SEIU and Ruiz, [United States District Court](#), June 26, 2020

- The EEOC notified the Plaintiff that they concluded the 1199 SEIU National Benefit Fund may have violated the ADA.

- According to the Dec. 8, 2020, Complaint:

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION		
NOTICE OF RIGHT TO SUE (CONCILIATION FAILURE)		
To: Sean Raymond, Sr. 117-31 237th Street Elmont, NY 11003	From: New York District Office 33 Whitehall Street 5th Floor New York, NY 10004	
<input type="checkbox"/> On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))		
EEOC Charge No.	EEOC Representative	Telephone No.
520-2019-05021	Perry Canales, Supervisory Investigator	(929) 506-5318
<b>TO THE PERSON AGGRIEVED:</b>		
<p>This notice concludes the EEOC's processing of the above-numbered charge. The EEOC found reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge but could not obtain a settlement with the Respondent that would provide relief for you. In addition, the EEOC has decided that it will not bring suit against the Respondent at this time based on this charge and will close its file in this case. This does not mean that the EEOC is certifying that the Respondent is in compliance with the law, or that the EEOC will not sue the Respondent later or intervene later in your lawsuit if you decide to sue on your own behalf.</p>		
<b>- NOTICE OF SUIT RIGHTS -</b> <small>(See the additional information attached to this form.)</small>		
<p><b>Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act:</b> This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed <b>WITHIN 90 DAYS of your receipt of this notice</b>, or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)</p>		
<p><b>Equal Pay Act (EPA):</b> EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that <b>backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.</b></p>		

## Defendant's Response

- 1199 National Benefit Fund denied that it failed to accommodate based on a disability and did not terminate the Plaintiff in retaliation for any disability.

- According to the Feb. 19, 2021, Answer to Complaint:

- 1) Denies that it failed to accommodate Plaintiff on the basis of any disability.
- 2) Denies that it terminated Plaintiff as a result of any disability or in retaliation for any request for accommodation.
- 3) Denies that Plaintiff requested or seeks an accommodation for restrictions related to any disability.
- 4) Denies that the accommodation Plaintiff seeks will address restrictions related to any disability.<sup>30</sup>

<sup>30</sup> Raymond v. 1199 SEIU National Benefit Fund, [United States District Court](#), Feb. 19, 2021

➤ **Defendant also listed multiple affirmative defenses.**

- According to the Feb. 19, 2021, Answer to Complaint:
  - 5) Plaintiff fails to state a claim upon which relief may be granted.
  - 6) Plaintiff cannot perform the essential functions of his job with or without a reasonable accommodation related to his disability.
  - 7) Plaintiff failed to mitigate damages.
  - 8) Plaintiff rejected the reasonable accommodation offered by defendant.
  - 9) Any action by Defendant was predicated on job-related business necessity.<sup>31</sup>

**Defendant’s Motion for Summary Judgement**

➤ **In 2023, 1199 SEIU National Benefit Fund asked that the lawsuit on both alleged violations of the ADA be dismissed.**

- According to the Nov. 18, 2022, Motion for Summary Judgement:

PLEASE TAKE NOTICE THAT, upon Defendant 1199SEIU National Benefit Fund’s (“NBF”) Memorandum of Law In Support of Summary Judgment, NBF’s Rule 56.1 Statement of Undisputed Material Facts, the Declaration of Ian A. Weinberger, Esq., the Affidavit of Kevin Hurley, the Affidavit of Frank Sossi, and all pleadings and proceedings heretofore had herein, the undersigned will move this Court before the Honorable George B. Daniels at the United States Courthouse, 500 Pearl Street, Courtroom 11A, New York, New York 10007 on November 18, 2022, pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Civil Rule 56.1, for summary judgment dismissing the Complaint filed by Plaintiff Sean R. Raymond, Sr. with prejudice, together with such other relief as this Court deems just and proper.<sup>32</sup>

**Order on Summary Judgement**

➤ **The Judge ordered that the charge of failing to accommodate under the ADA would be dismissed but said that the charge of terminating for a disability would stand.**

- According to the July 20, 2023, Order:

Plaintiff Sean R. Raymond, Sr. brings this suit against Defendant 1199 SEIU National Benefit Fund (“NBF”) under the Americans with Disabilities Act of 1990

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<sup>31</sup> Raymond v. 1199 SEIU National Benefit Fund, [United States District Court](#), Feb. 19, 2021

<sup>32</sup> Raymond v. 1199 SEIU National Benefit Fund, [United States District Court](#), Nov. 18, 2022

(“ADA”), 42 U.S.C. & 12101 et seq. (Compl., ECF No. 1, at 1-3) Plaintiff alleges that NBF failed to provide reasonable accommodations for his disability and then terminated his employment because he was disabled. (Id. At 4) Before this Court is Defendant’s motion for summary judgement pursuant to Federal Rule of Civil Procedure 56. (ECF No. 38) Defendant’s motion for summary judgement as to the discriminatory termination claim under the ADA is DENIED. Defendant’s motion for summary judgement as to the failure-to-accommodate claim is GRANTED.<sup>33</sup>

➤ **Judge recently ruled that a reasonable jury could conclude that Plaintiff was terminated due to his disability.**

- According to the July 20, 2023, Order:

A reasonable jury could find that Plaintiff suffered the adverse employment action of his termination due to his disability. Plaintiff has proffered sufficient evidence that he has a disability under the ADA, as well as the Defendant NBF had notice of his disability. The parties do not dispute that Defendant NBF is an employer subject to the ADA. (See Hurley Ex. N; Opp’n at 14.) To win on summary judgement, then, Defendant must demonstrate as a matter of law that Plaintiff was not fired because of his disability.

**Gerard v. 1199 SEIU Benefit and Pension Funds**

**Allegation(s)**

➤ **In 2023, the SEIU National Benefit Fund was sued for allegedly violating the Family Medical Leave Act (FMLA) by terminating an employee for requesting accommodation and FMLA.**

- According to the Sept. 7, 2023, Complaint:

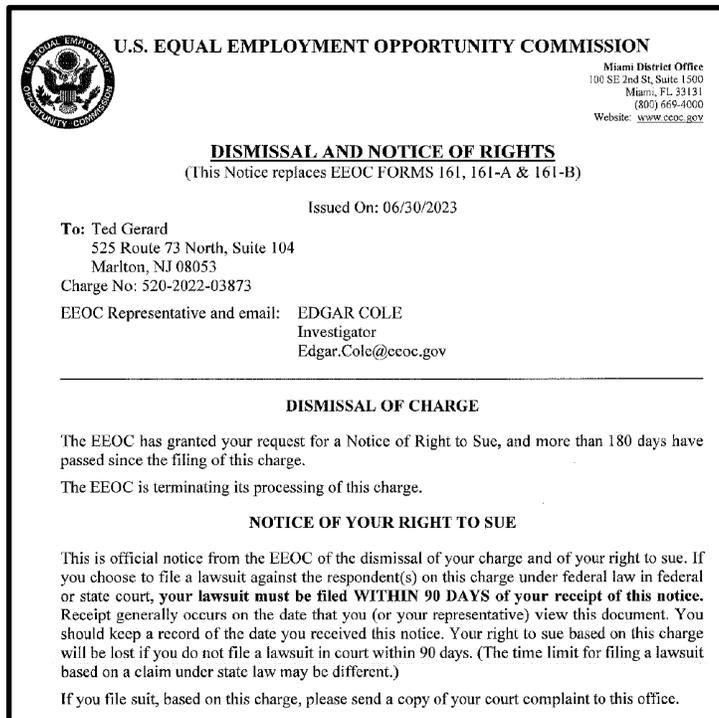
I was terminated by my former employer while being a remote worker after requesting accommodation and FMLA because I had long Covid. They delayed the response to my request for accommodation for 3 months and offered to give me the FMLA only after terminating me, which was by that time only 2 days. They did not grant me accommodation when requested in August of 2021 when I asked for it when I had Covid from the end of August to the beginning of September of that year and expected me to forego the 90-day waiting period as advised by both my primary care doctor and cardiologist and get vaccinated three weeks after having Covid. I communicated to HR repeatedly that I was still sick and even told them via phone message and a conversation with my Assistant Director Cheryl Dumas that my cardiologist thought I might need stints put into my heart because of either blockages caused by Covid-19 or a pre-existing condition covid may have revealed. Either way, my cardiologist said he needed time to determine what was wrong since I

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<sup>33</sup> Raymond v. 1199 SEIU National Benefit Fund, [United States District Court](#), July 20, 2023

had failed every test he had given me. I was told by HR that the company doctor, whom I had never met and who had never examined me, stated that I was fine to be vaccinated. This is all after I repeatedly told them I had no problems getting vaccinated and would do so after the 90-day waiting period. I even made it clear to management that I had to get vaccinated because my wife is a first responder who works in labor & delivery at St. Peters Hospital in New Brunswick, NJ. I even gave HR an approximate date as to when I would get vaccinated, which was about 11/18/-11/19/2021, which is the day I got vaccinated and which was also the same day they terminated me and said they took my non-compliance to get vaccinated when they wanted me to, as a cause for termination. All the while they had told me that I would be getting a response to the status of my FMLA but never did even though my first FMLA was submitted on 09/20/21 and my second was on 10/05/21 and by law an employer is legally required to respond in five business days.<sup>34</sup>

- **The Equal Employment Opportunity Commission (EEOC) granted Gerard's request for a Notice of Right to Sue.**
  - According to a June 30, 2023, EEOC Dismissal and Notice of Rights:



The image shows a formal document from the U.S. Equal Employment Opportunity Commission (EEOC). It is titled "DISMISSAL AND NOTICE OF RIGHTS" and is dated 06/30/2023. The document is addressed to Ted Gerard at 525 Route 73 North, Suite 104, Marlton, NJ 08053. The charge number is 520-2022-03873. The EEOC representative is Edgar Cole, an investigator, with the email Edgar.Cole@eoc.gov. The document states that the EEOC has granted the request for a Notice of Right to Sue and that more than 180 days have passed since the filing of the charge. It also states that the EEOC is terminating its processing of the charge. A section titled "NOTICE OF YOUR RIGHT TO SUE" explains that this is official notice of the dismissal of the charge and the right to sue. It states that if the recipient chooses to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, the lawsuit must be filed within 90 days of the receipt of this notice. The document also notes that the time limit for filing a lawsuit based on a claim under state law may be different. Finally, it asks the recipient to send a copy of their court complaint to the office if they file suit.

### Defendant's Answer

- **Defendant has not had time to respond to the lawsuit with an answer to the complaint.**

<sup>34</sup> Gerard v. 1199 SEIU National Benefit Fund, [United States District Court](#), Sept. 7, 2023