

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup> JUDICIAL  
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA  
GENERAL JURISDICTION DIVISION

JORGE RODRIGUEZ, et al.  
Plaintiffs,

CIRCUIT COURT CIVIL  
Case No: 14-007997 CA 01 (22)

v.

CITY OF MIAMI, et al.,  
Defendants.

JORGE CASTRO, et al.,  
Plaintiffs,

CIRCUIT COURT CIVIL  
Case No.: 14-007987 CA 01 (22)

v.

CITY OF MAIMI, et al.  
Defendants.

**SGT. ROBIN STARKS' INDIVIDUALIZED COMPLAINT**

Under Judge Hanzman's June 15, 2017 Order on Motions to Dismiss, Plaintiff Sgt. Robin Starks make this individualized complaint and sue THE CITY OF MIAMI FIREFIGHTERS' AND POLICE OFFICERS' RETIREMENT TRUST & PLAN; THE BOARD OF TRUSTEES OF THE CITY OF MIAMI FIREFIGHTERS' AND POLICE OFFICERS' RETIREMENT TRUST; AND THE CITY OF MIAMI, and allege(s):

1. This is an action for damages exceeding \$15,000, exclusive of costs and interest.
2. Plaintiff Robin Starks resides in Miami-Dade County. She served in the Miami Police

Department from 1989 through October 23, 2015, retiring before she wanted to.

3. Defendant THE CITY OF MIAMI FIREFIGHTERS' AND POLICE OFFICERS' RETIREMENT TRUST & PLAN is an entity created under the Code of the City of Miami, FL. Its principal place of business is in Miami-Dade County. And under the Code, it can be sued. Sec. 40-210, Code of the City of Miami.

4. Defendant THE BOARD OF TRUSTEES OF THE CITY OF MIAMI FIREFIGHTERS' AND POLICE OFFICERS' RETIREMENT TRUST is named in its trustee capacity and in its capacity as the Plan Administrator.

5. Defendant City of Miami is a municipal corporation with a principal place of business in Miami-Dade County.

#### **The Supreme Court Holds that Miami's 2010 Cuts Were Unlawful**

6. In 2017, The Florida Supreme Court held that the 2010, rushed, unilateral cuts that the City of Miami imposed upon its police officers' wages, pensions, and benefits were unlawful, an unfair labor practice, and that the police officers were deprived of their constitutional right to collectively bargain. Headley v. City of Miami.<sup>1</sup>

#### **Chaos and Unlawful Action at the City of Miami**

7. Beginning in 2009, Miami police officers' wages, pensions, and benefits were under extreme threat. The City made it known that it wanted substantial changes made to the Collective Bargaining Agreement that was to run through at least September 30, 2010. In the event

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<sup>1</sup> 215 So. 3<sup>rd</sup> 1 (Fla. 2017)

a new CBA was not reached by that date, the existing CBA would continue in effect. The City was not about to have that.

8. In 2009, the City of Miami began internal discussions on cutting police officer wage, pension, and other benefits.

9. That same year -- 2009, fearful that they would suffer losses in their pensions with the threatened changes, the number of police officers who entered the Deferred Retirement Option Program ("DROP") increased dramatically.

10. And in 2010, the numbers of police officers who entered the DROP system spiked even more dramatically. Fraternal Order of Police Memos and City Bulletins that year all warned of the financial changes to come.

11. The Fraternal Order of Police ("Union") even organized public rallies to protest the pay and pension reductions that were on the horizon.

12. By the summer of 2010, it was evident that the City was not negotiating with the Union in good faith on a successor CBA.

13. And on July 28, 2010, while the Union's negotiating lawyer was on vacation, the City declared a "financial urgency" and invoked the process set forth in §447.095, Fla. Stat. Under §447.095, Fla. Stat., the procedural steps the City must take under a "financial urgency," including working with the Union, are set forth.

14. This declaration of "financial urgency" only fueled the worry, concern, chaos and confusion among police officers concerning their pensions.

15. As with its negotiations for a new CBA, the City then flouted the procedural requirements under §447.095, Fla. Stat.

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16. On August 31, 2010, consistent with its prior, non-compliant and unlawful behavior under §447.095, Fla. Stat., the City Commission – through a City Ordinance -- imposed unilateral changes to the CBA. These changes cut pension benefits, wages, and other benefits. (These were the changes that the Supreme Court declared unlawful in 2017.)

17. With the Commission's enactment of this Ordinance, confusion, panic, and chaos were now fully set in among the police officers, including Plaintiff.

18. The language of the City's ordinance was confusing. The Union, FIPO, the FIPO Board, and the City all came out with different and confusing interpretations. Officers, including Plaintiff, could not make sense of the conflicting information.

19. Once the City had declared financial urgency and the Ordinance passed, the rush to enter the DROP system and the decision to stay or leave the DROP became especially chaotic. FIPO was advising Officers who did not want to retire that their pension benefits would be reduced if they did not drop before the Ordinance went into effect.

20. Any accrued benefits, however, could not be lawfully reduced. The Police officers did not know this.

#### **FIPO and the Board's Activities During the Chaos**

21. When an officer wants to consider entering the DROP, the officer must meet with FIPO at the FIPO office.

22. The Board's procedures require the officer to meet with a Retirement Plan administrator. At the meeting, the officer reviews retirement options.

23. Because of the chaos and confusion surrounding the financial changes that were to come, and which materialized after the City declared “financial urgency” and imposed unilateral cuts affecting all police officers, it was especially critical that FIPO provide accurate information, sound advice, sound guidance, and sound counseling to the officers, including Plaintiff. And, it was especially critical for FIPO to correct any erroneous information previously given to any officer, including Plaintiff.

24. As for the Board and its oversight responsibility over FIPO, it was incumbent on the Board to make sure that the pension advice and guidance was accurate and that any erroneous information was immediately corrected.

25. Providing accurate information and correcting erroneous information is critical because once an officer signs a DROP agreement, the officer can revoke it at any time before the officer actually enters the DROP system. And that DROP entry time usually occurs weeks or months after signing the DROP agreement.

26. And once an officer enters the DROP, the officer may only remain with the Police Department for 7 more years and then is forcibly retired.

27. Despite the confusion and dramatically high numbers of officers – including Plaintiff Sgt. Starks -- rushing to FIPO to study their options and obtain proper advice, FIPO and the Board assigned an assistant, Dania Orta, as the sole person at FIPO to conduct these meetings and dispense advice and provide guidance. The Pension Administrator – Robert Nagle, apparently, chose not to participate in these one-on-one meetings. And the Board did nothing about his absence.

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28. Because FIPO and the Board placed Orta in a position with insufficient information, legal opinion, training and supervision, Orta supplied incorrect advice, counseling, and guidance to police officers, including Sgt. Starks -- that if they did not enter the DROP before the changes that were coming, their monthly pension amounts would be reduced. In other words, they would suffer a reduction in pension benefits and would be worse off.

29. Even for those who entered the DROP, either before the City declared financial urgency or before the Ordinance was passed, Orta advised those officers, including Sgt. Starks that their pension benefits would most likely decrease with the changes that were bound to come before or at the end of the CBA's term. In other words, they would be worse off if they did not DROP before the changes came.

30. Particularly with officers who entered the DROP in 2009 and the earlier part of 2010, many of the officers rushed to the FIPO Office due to the fears that pension cuts were coming and were being discussed either within the City's Administration or its Commission. Those officers expressed their fear to Orta, including Sgt. Starks, that they wanted to drop out of fear that their pensions would be cut. At no time, did anyone at FIPO correct their misunderstanding or otherwise supply them with information that any accrued benefits could not be cut or taken away.

31. *Back to the Ordinance Imposing Unilateral Changes on the Police.* After reviewing the Ordinance and any available City Bulletins, the Board obtained a legal opinion from their counsel.

32. The Board's counsel delivered that opinion and made two points. First, The Board's counsel wrote that:

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“In Florida, it is well established that a public employee’s rights to benefits under a retirement system cannot be reduced once the public employee becomes eligible for retirement. An employee is not required to retire in order to protect his rights.”

33. The Board’s Counsel cited the Florida Supreme Court, two appellate decisions (including the 3<sup>rd</sup> DCA), and a recent letter from the State Retirement Director on the very retirement issue. She attached copies of that letter as well as the underlying trial court order on one of the appellate cases.

34. Despite the clear law on this matter, even the Board’s counsel found the ordinance’s language confusing and read it to mean that it was indeed, illegally attempting to cutting benefits even for those who were completely vested and were eligible for retirement under the current system:

“The Ordinance . . . attempts to reduce benefits for all employees who retire on or after October 1, 2010. Clearly, certain provisions are contrary to law.”

(emphasis in the original)

35. Two days later, and just eight days before the Ordinance’s effective date, FIPO’s Pension Administrator – Mr. Nagle -- finally began to study the matter and appears to have figured out that the Ordinance would not affect accrued and vested benefits. He then emailed FIPO’s counsel, expressing deep concern over the chaos, multiple interpretations, and confusion leading officers into making misinformed retirement decisions:

“We are in the middle of a *‘tower of babel’* due to the many interpretations of what is going around.

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I have attached a copy of the (Police Union) version distributed to all cops, with interpretations from you, (T)om, (R)aul, and the man in the street – *this is just too much chaos and confusion*.

I think we need a single Board voted and approved version and plan for all to go by or *we are going to have an army of people who will feel outraged since I guarantee we will have some who will go the “wrong way” and fell (sic) slighted to say the least*  
(emphasis added)

36. Plaintiff was among the officers making misinformed decisions and he does feel the outrage that FIPO predicted. Plaintiff went the wrong way.

37. Despite FIPO’s stark awareness that it had misinformed officers and given erroneous advice, FIPO and the Board did not vote on or approve a version in time to stop or rectify those police officers, like Plaintiff, who had gone the “wrong way.”

**The Board Informs the Firefighters their Retirement Benefits are Safe – But Keeps the Police in the Dark**

38. FIPO did nothing to clarify the chaos and confusion for the police officers. FIPO and the Board knew that doing nothing meant financial and career harm to those officers who gone the “wrong way” and DROPPED and to those who were about to DROP. FIPO and the Board failed to notify police officers that FIPO’s prior advice, counseling, and guidance were in error. FIPO and the Board did nothing to prevent police officers from going the “wrong way.”

39. The Board did, however, get word to the Firefighters’ Union that accrued and vested retirement benefits could not be lawfully touched. The Board shared the legal opinion with the Firefighters Union. The Board, however, kept the Police Union in the dark.

40. The police officers did not need to enter the DROP to preserve their pension benefits. Those benefits were accrued and vested. The Board chose not to tell them.

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41. In late 2013, FIPO and the Board acknowledged their mistake. Its counsel advised the Board that the Ordinance could not be applied to deprive police officers of accrued and vested benefits; that the ordinance could not be applied to them prospectively, and that the Board was grandfathering in all those eligible to enter DROP but had not signed a DROP agreement. The Board did not reveal that it had gotten word to the firefighters back in 2010 that their retirement benefits were safe.

#### Sgt. Starks's Unwanted DROP and Retirement

42. Sgt. Starks joined the force in 1989. She served in undercover narcotics for 6 years, served in the Special Investigations Section, was in the Vice Detail for money laundering, served in Dignitary Protection, served in ASCETS Detail when she was detached to a multi -taskforce that included DEA, FBI, and other municipalities on money laundering and narcotics activities. She also served in Internal Affairs, Community Relations, and as a Training Advisor at the Police Academy. Sgt. Starks served as Supervisor for the Overtown Problem Solving Team. She has received numerous commendations and certificates of achievement. In Sgt. Starks's case, she met with Orta sometime in or about April 2010. The Pension Administrator was not available. By this time, she had heard from senior officers and in Union meetings that pay and pension cuts were coming. The expected cuts were to be dramatic. When she met with Orta, Orta advised and recommended that Sgt. Starks enter the DROP because that way should would not lose her pension benefits. By entering the DROP, Orta advised that Sgt. Starks would lock in her monthly DROP and pension amount. Orta advised Sgt. Starks that she would otherwise have to work longer to make up the pension losses that she would suffer. Orta confirmed Sgt. Starks's belief that her

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pension benefits would be cut and otherwise reduced. Based on this advice, counseling and guidance – or lack thereof, Sgt. Starks signed papers to DROP effective on or about September 26, 2010. Sgt. Starks has not been able to locate a copy of the DROP agreement but has requested it from the City. Plaintiff will supplement as soon as she has a copy of it.

43. Sgt. Starks did not want to retire yet. As a single mother of two, she planned to enter the DROP 11 years later – in 2021 (at age 55) – stay in the DROP for 7 years, and then retire.

44. At no time did anyone at FIPO or the Board advise Sgt. Starks that her accrued and vested benefits could not be touched. At no time did anyone at FIPO or the Board advise Sgt. Starks that FIPO's confirmation that her pension benefits could and probably would suffer was erroneous.

#### **Count I – Breach of Contract**

Plaintiff Sgt. Robin Starks sues Defendants FIPO, the Board of Trustees, and the City of Miami realleging paragraphs 1 through 44, and further alleges:

45. FIPO, the Trust and the Retirement Plan are created under Sec.40-191 through 40-212, Code of the City of Miami.

46. The Retirement Plan set forth in the Miami Dade Code is a unilateral contract.<sup>2</sup> And under the Code, FIPO and the Board are charged with a number of responsibilities that benefit the officers and their beneficiaries.

47. Under the unilateral contract, the Members of the Board are charged with express, specific fiduciary duties:

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<sup>2</sup> City of Hollywood v. Petrosino, 864 So.2d 1175, (Fla. 4th DCA 2004)

- (a) "The trustees shall discharge their duties and responsibilities solely in the interest of members and beneficiaries of the retirement system: with the care skill care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in a conduct of an enterprise of a like character and with like aims."
- (b) And they must discharge their duties "for the exclusive purpose of providing benefits to members."

See Sec 40-193(c)(1)(2), City of Miami Code.

48. The Board is also charged with employing a "pension administrator to assist the Board in the performance of its administrative duties." The pension administrator that the Board selects must be qualified to, *inter alia*:

- (a) "(H)ave an accounting or pension background; having managerial experience including hiring, directing, and motivating a small staff."
- (b) "(H)ave effective oral communication skills; have the initiative to obtain resource data; be capable of preparing correspondence . . .and expressing ideas in writing."
- (c) "(B)e able to insist upon, and actively pursue delivery of all reports and other documents required for the efficient operation of the retirement system."
- (d) (B)e efficient, practical, and committed to responsible and effective operation of the retirement system." Sec. 40-194(b)(1)(a), City of Miami Code.

49. Defendants breached the contract by committing, *inter alia*, the following acts and omissions:

- (a) FIPO's pension administrator's failure to supervise or otherwise be sufficiently involved in making reasonably sure that police officers, including Plaintiff, were receiving correct information.
- (b) The Board's action in informing the Firefighters Union but not the Police Union that their retirement benefits were safe.

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- (c) The Board's action is sharing the legal opinion it had obtained with the Firefighters Union but not the Police Union.
  - (d) FIPO and the Board placing and permitting unqualified, administrative assistant to provide erroneous information to the officers, including Plaintiff.
  - (e) FIPO's pension administrator's failure to supervise or otherwise be sufficiently involved in making reasonably sure that police officers, including Plaintiff, were receiving correct information.
  - (f) FIPO's failure to give proper advice, guidance, and counseling to police officers, including Plaintiff.
  - (g) FIPO and the Board's failure to clear up the admitted "chaos and confusion" surrounding the pension system changes so that the officers, including Plaintiff, were able to make informed decisions.
  - (h) FIPO's communicating and providing Plaintiff with improper information that if Plaintiff did not drop now, their pension benefits would be reduced.
  - (i) FIPO and the Board failing to inform Plaintiff that the City could never take away vested and accrued benefits.
  - (j) FIPO and the Board placing and permitting unqualified, administrative assistant to provide erroneous information to the officers, including Plaintiff.
  - (k) The Board's failure to make sure that the FIPO pension administrator was actively involved, supervising, or otherwise taking reasonable steps to make sure that the police officers, including Plaintiff, were receiving correct information from FIPO.
  - (l) FIPO and the Board failing to notify the officers, including Plaintiff, of the erroneous information provided so that the officer could take action to cancel the DROP decision or take other action to correct it.
  - (m) FIPO and the Board's failure to correct any misunderstanding that Plaintiff was basing their decision on; and FIPO and the Board's confirmation of erroneous information that Plaintiff was making decisions based on.

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- (n) The Board's failing to act with the "care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in a conduct of an enterprise of a like character and with like aims." - in violation of Sec. 4-193, Code of the City of Miami.
- (o) The Board's failing to properly discharge their fiduciary duties and responsibilities solely in the interest of the officers and their beneficiaries – in violation of Sec. 40-193(c), Code of the City of Miami.
- (p) The Board' failing to properly discharge their fiduciary duties and responsibilities for the exclusive purpose of providing benefits to members – in violation of Sec. 40-193(c)(1), Code of the City of Miami.
- (q) The Board's failing to select a pension administrator having a proper pension administration background or with sufficient managerial experience – in violation of Sec. 40-194(b)(1)(a), Code of the City of Miami.
- (r) The Board and FIPO's failure to properly train Dania Orta or other person meeting with the officer so that she could provide accurate information to the police officers, including Plaintiff.
- (s) FIPO and the Board failing to obtain proper legal advice on the vesting of accrued benefits and consequently, failing to provide the police officers correct information, including Plaintiff.
- (t) The Board's failing in selecting or supervise a pension administrator that could manage providing accurate information to police officers, including Plaintiff, on vested and accrued benefits, in violation of Sec. 40-194 (B), City of Miami Code.
- (u) The Board's failing to select or supervise an administrator that had sufficient pension administration background, had the initiative to obtain resource data on accrued, vested benefits; was capable of preparing correspondence on the accrued benefits and expressing those ideas in writing – in violation of Sec. 40-194 (b)(1)(a)(1)(4)(11)
- (v) The Board's failing to select or supervise a pension director that was supposed to have effective oral communication skills to be able to explain that pension benefits are accrued, vested and could not be taken away – violating Sec. 40-194 (b)(1)(a)(13)

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- (w) The Board's failing to select or supervise a pension director that was supposed to have to be efficient, practical, and committed to responsible and effective operation when failing to advising or providing information to officers on accrued and vested benefits, but instead providing the wrong information; – violating Sec. 40-194 (b)(1)(a)(15).
- (x) The Board's failing to select or supervise a pension director that was supposed to have to be efficient, practical, and committed to responsible and effective operation when failing to advising or providing information to officers on accrued and vested benefits, but instead confirming erroneous information or otherwise failing to correct misinformation on vested and accrued benefits that the officer was basing their decisions on; – violating Sec. 40-194 (b)(1)(a)(15).
- (y) The Board failing to obtain legal counsel to obtain proper and timely advice on accrued and vested benefits in violation of Sec. 40-194 (b)(3).
- (z) FIPO and the Board failing to take any action to correct the erroneous information that FIPO supplied to the officers, including Plaintiff.
- (aa) FIPO's failure to properly administer the pension in providing inaccurate information to officers on vested and accrued benefits, in violation of Sec. 40-194 (B), City of Miami Code.
- (bb) FIPO's failure to properly administer the pension confirming erroneous information or otherwise confirming erroneous information or otherwise failing to correct misinformation on vested and accrued benefits that the officer was basing their decisions on, in violation of Sec. 40-194 (B), City of Miami Code.
- (cc) FIPO's failure to obtain appropriate resource data on accrued, vested benefits; and failing to provide correspondence on the accrued benefits and expressing those ideas in writing – in violation of Sec. 40-194 (b)(1)(a)(1)(4)(11), City of Miami Code.
- (dd) FIPO's failure to provide effective oral communication skills to be able to explain that pension benefits are accrued, vested and could not be taken away; and to otherwise effectively communicate the erroneous information that was provided to the officers, including Plaintiff – violating Sec. 40-194 (b)(1)(a)(13), City of Miami Code.

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- (ee) FIPO's failure to be efficient, practical, and committed to responsible and effective operation of the retirement system in advising or providing information to officers, including Plaintiff, on accrued and vested benefits, but instead providing the wrong information – violating Sec. 40-194 (b)(1)(a)(15).
- (ff) FIPO's failure to be efficient, practical, and committed to responsible and effective operation of the retirement system in advising or providing information to officers, including Plaintiff, on accrued and vested benefits, but instead confirming erroneous information or otherwise failing to correct misinformation on vested and accrued benefits that the officer was basing their decisions on– violating Sec. 40-194 (b)(1)(a)(15).
- (gg) FIPO's failure to be efficient, practical, and committed to responsible and effective operation of the retirement system by assigning an assistant administrator in advising or providing information to officers, including Plaintiff, on accrued and vested benefits, who then providing the wrong information -- or otherwise confirming erroneous information or otherwise failing to correct misinformation – violating Sec. 40-194 (b)(1)(a)(15).
- (hh) Irresponsibly failing to take any action to correct the erroneous information that FIPO supplied to the officers, including Plaintiff, resulting in ineffective operation of the retirement system – violating 40-194 (b)(1)(a)(15).

50. As a consequence of these contractual breaches – including the FIPO advice, counseling and guidance provided to Plaintiff in the FIPO meeting, Plaintiff **Sgt. Starks** prematurely entered the DROP on or about September 26, 2010, believing that Plaintiff would end up with a lower pension amount and benefits if Plaintiff dropped after the City changed the pension plan.

51. Had FIPO properly advised, counseled and guided that the pension benefits were vested, accrued and could not be reduced, Plaintiff would not have entered the DROP as Plaintiff coercively did. Instead, Plaintiff would have entered the DROP in 2021 and retired 7 years later.

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52. As a consequence of these contractual breaches, Plaintiff has suffered damages, to wit: loss of pension amount or reduced pension benefits, premature retirement, decrease in earnings, loss of future pay, loss of salary, loss of benefits, and other damages.

53. Because the City of Miami created FIPO and the Board of Trustees, and funds the Retirement Plan, it is an indispensable party.

WHEREFORE, Plaintiff Sgt. Robin Starks demands judgment for damages against Defendant against all Defendants -- FIPO, the Board, and the City of Miami, prejudgment interest, and trial by jury on all issues so triable.

## **Count II**

### **Breach of Covenant of Good Faith and Fair Dealing**

Plaintiff Sgt. Robin Starks sues all Defendants -- FIPO, the Board, and the City of Miami -- realleging paragraphs 1 through 44, and further alleges:

54. FIPO, the Trust and the Retirement Plan are created under Sec.40-191 through 40-212, Code of the City of Miami, FL.

55. The Retirement Plan set forth in the Miami Dade Code is a unilateral contract.<sup>3</sup> And under the Code, FIPO and the Board are charged with a number of responsibilities for the benefit of the officers and the beneficiaries.

56. The implied covenant of good faith and fair dealing is a part of every contract.<sup>4</sup>

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<sup>3</sup> City of Hollywood v. Petrosino, 864 So.2d 1175, (Fla. 4th DCA 2004)

<sup>4</sup> County of Brevard v. Miorelli Eng'g, Inc., 703 So.2d 1049, 1050 (Fla.1997)

57. Under the unilateral contract, the Members of the Board are charged with express, specific fiduciary duties: “The trustees shall discharge their duties and responsibilities solely in the interest of members and beneficiaries of the retirement system: with the care skill care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in a conduct of an enterprise of a like character and with like aims;” and they must discharge their duties “for the exclusive purpose of providing benefits to members.” Sec 40-193(c)(1)(2), City of Miami Code.

58. The Board is also charged with employing a “pension administrator to assist the Board in the performance of its administrative duties.” The pension administrator that the Board selects must be qualified to, *inter alia*:

- (a) “(H)ave an accounting or pension background; having managerial experience including hiring, directing, and motivating a small staff.”
- (b) “(H)ave effective oral communication skills; have the initiative to obtain resource data; be capable of preparing correspondence . . .and expressing ideas in writing.”
- (c) “(B)e able to insist upon, and actively pursue delivery of all reports and other documents required for the efficient operation of the retirement system.”
- (d) (B)e efficient, practical, and committed to responsible and effective operation of the retirement system. ” Sec. 40-194(b)(1)(a), City of Miami Code.

59. And in selecting the administrator, the Board is charged with “exercis(ing) all judgment and care under the circumstances then prevailing which persons of prudence, discretion and intelligence exercise in the management of their own affairs.”

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60. The contract is ambiguous about the permissibility of FIPO – particularly through an administrative assistant -- in giving advice, guidance and counseling to police officers that ordinance changes or expected changes to come would mean that the police officers would receive less money if they did not DROP when they did, including Plaintiff.

61. The contract is also ambiguous about the permissibility of the Board being able to take action to assure the Firefighters that their retirement benefits were safe, but not do the same for the Police Officers.

62. By giving the advice, guidance, and counseling that FIPO gave to Plaintiff concerning pension losses Plaintiff would suffer, and by failing to then correct the erroneous information -- the Board breached the implied covenant of good faith and fair dealing by, *inter alia*, committing the following acts and omissions:

- (a) Failed to carry out their express, contractual fiduciary duties under Sec. 40-193, City of Miami Code.
- (b) Failed to carry out their express, contractual fiduciary duties by informing the Firefighters Union that their pensions were safe, sharing the legal opinion it had obtained, but not doing the same for the Police Union, in violation of Sec. 40-193, City of Miami Code.
- (c) Failing in selecting or supervise a pension administrator that could manage providing accurate information to officers on vested and accrued benefits, in violation of Sec. 40-194 (B), City of Miami Code.
- (d) Failed to select or supervise an administrator that had sufficient pension administration background, had the initiative to obtain resource data on accrued, vested benefits; was capable of preparing correspondence on the accrued benefits and expressing those ideas in writing – in violation of Sec. 40-194 (b)(1)(a)(1)(4)(11)
- (e) Failed to select or supervise a pension director that was supposed to have effective oral communication skills to be able to explain that pension benefits are accrued, vested and could not be taken away – violating Sec. 40-194 (b)(1)(a)(13)

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- (f) Failed to select or supervise a pension director that was supposed to have to be efficient, practical, and committed to responsible and effective operation when failing to advising or providing information to officers on accrued and vested benefits, but instead providing the wrong information – or instead confirming erroneous information or otherwise failing to correct misinformation – violating Sec. 40-194 (b)(1)(a)(15).
  - (g) Failing to obtain legal counsel to obtain proper and timely advice on accrued and vested benefits – in violation of Sec. 40-194 (b)(3).
  - (h) Failing to take any action to correct the erroneous information that FIPO supplied to the officers.

63. By giving the advice that FIPO gave to Plaintiff concerning the pension losses Plaintiff would suffer, FIPO breached the covenant of good faith and fair dealing by committing, *inter alia*, the following acts and omissions:

- (a) Failing to properly administer the pension in providing inaccurate information to officers on vested and accrued benefits, in violation of Sec. 40-194 (B), City of Miami Code.
- (b) Failing to obtain appropriate resource data on accrued, vested benefits; and failing to provide correspondence on the accrued benefits and expressing those ideas in writing – in violation of Sec. 40-194 (b)(1)(a)(1)(4)(11), City of Miami Code.
- (c) Failing to provide effective oral communication skills to be able to explain that pension benefits are accrued, vested and could not be taken away; and to otherwise effectively communicate the erroneous information that was provided to the officers – or otherwise confirming erroneous information and failing to correct misinformation that the officer was basing decisions on – violating Sec. 40-194 (b)(1)(a)(13), City of Miami Code.
- (d) Failing to be efficient, practical, and committed to responsible and effective operation of the retirement system in advising or providing information to officers on accrued and vested benefits, but instead providing the wrong and misleading information – violating Sec. 40-194 (b)(1)(a)(15).

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- (e) Failing to be efficient, practical, and committed to responsible and effective operation of the retirement system by assigning an assistant administrator in advising or providing information to officers on accrued and vested benefits, who then providing the wrong information; or otherwise confirming erroneous information and failing to correct misinformation that the officer was basing decisions on -- violating Sec. 40-194 (b)(1)(a)(15).
- (f) Failing to obtain legal counsel to obtain proper and timely advice on accrued and vested benefits – in violation of Sec. 40-194 (b)(2).
- (g) Irresponsibly failing to take any action to correct the erroneous information that FIPO supplied to the officers, resulting in ineffective operation of the retirement system – violating 40-194 (b)(1)(a)(15).
- (h) Irresponsibly failing to take action to correct the officers misunderstanding that they were basing their decisions or otherwise doing nothing to reverse FIPO's confirmation of these misunderstanding, resulting in ineffective operation of the retirement system – violating 40-194 (b)(1)(a)(15).

64. Had FIPO properly advised, counseled and guided that the pension benefits were vested, accrued and could not be reduced, Plaintiff would not have entered the DROP as Plaintiff coercively did. Instead, Plaintiff would have entered the DROP in 2014 and retired 7 years later.

65. As a consequence of these breaches of the implied covenant of good faith and fair dealing, Plaintiff have suffered damages, to wit: loss of pension amount, reduced pension benefits, premature retirement, decrease in earnings, loss of future pay, loss of salary, loss of benefits, and other damages.

66. Because the City of Miami created FIPO and the Board of Trustees, and funds the Retirement Plan, it is an indispensable party.

PITA WEBER DEL PRADO

WHEREFORE, Plaintiff Robin Starks demands judgment for damages against all Defendants -- FIPO, the Board, and the City of Miami -- and trial by jury on all issues so triable.

**CERTIFICATE OF SERVICE**

WE CERTIFY that a true and correct copy of the foregoing was **emailed** to the following individuals on the attached Service List and electronically filed with the Clerk of Miami-Dade County by using the Florida Courts eFiling Portal on this 4<sup>TH</sup> August, 2017.

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