

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

GAIL HOLLER-KENNEDY f/k/a GAIL ELIZABETH
HOLLER,

Plaintiff,

v.

THE DIOCESE OF BUFFALO, N.Y.; PROVINCE OF ST.
ANTHONY OF PADUA OF THE CONVENTUAL
FRANCISCANS a/k/a ST. ANTHONY OF PADUA PROVINCE
OF THE CONVENTUAL FRANCISCANS; ST. ANTHONY OF
PADUA PROVINCE, FRANCISCAN FATHERS MINOR
CONVENTUAL, U.S.A; FRANCISCAN FATHERS MINOR
CONVENTUALS OF BUFFALO, N.Y.; FRANCISCAN FATHERS
MINOR CONVENTUAL, ST. ANTHONY OF PADUA
PROVINCE; ORDER OF FRIARS MINOR CONVENTUAL, ST.
ANTHONY OF PADUA PROVINCE, U.S.A., INC.;
FRANCISCAN MINOR CONVENTUALS OF MD. INC. OF
ELLICOTT CITY; OUR LADY OF ANGELS PROVINCE,
U.S.A.; FRANCISCAN FRIARS-OUR LADY OF THE ANGELS
PROVINCE, INC.; and CARDINAL O'HARA HIGH SCHOOL,

Defendants.

Index No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, Gail Holler-Kennedy f/k/a Gail Elizabeth Holler, by her attorneys Simmons Hanly Conroy LLC and the Law Offices of Mitchell Garabedian, brings this action against The Diocese of Buffalo, N.Y.; Province of St. Anthony of Padua of the Conventual Franciscans a/k/a St. Anthony of Padua Province of the Conventual Franciscans; St. Anthony of Padua Province, Franciscan Fathers Minor Conventual, U.S.A; Franciscan Fathers Minor Conventuals of Buffalo, N.Y.; Franciscan Fathers Minor Conventual, St. Anthony of Padua Province; Order of Friars Minor Conventual, St. Anthony of Padua Province, U.S.A., Inc.; Franciscan Minor Conventuals of MD. Inc. of Ellicott City; Our Lady of Angels Province, U.S.A.; Franciscan Friars-Our Lady of the Angels Province, Inc.; and Cardinal O'Hara High School, and alleges, on personal

knowledge as to herself and on information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that each Defendant either resides in New York or conducts or, at relevant times conducted, activities in New York that give rise to the claims asserted herein.

2. Venue for this action is proper in the County of Erie pursuant to CPLR 503 in that one or more Defendant resides in this County and a substantial part of the events or omissions giving rise to the claims asserted herein occurred here.

PARTIES

3. Plaintiff Gail Holler-Kennedy f/k/a Gail Elizabeth Holler ("Plaintiff"), is an individual residing in Niagara County, New York.

4. Defendant The Diocese of Buffalo, N.Y. ("Diocese of Buffalo") is a Roman Catholic diocese headquartered in Buffalo, New York, with its principal place of business located at 795 Main Street, Buffalo, NY. At all relevant times, the Diocese of Buffalo operated schools for minor children, including, during the period 1978-1982, Cardinal O'Hara High School.

5. Defendant Province of St. Anthony of Padua of the Conventual Franciscans, a/k/a St. Anthony of Padua Province of the Conventual Franciscans ("St. Anthony Province") was at relevant times a province of a religious order of the Roman Catholic Church, The Franciscan Fathers, Minor Conventuals, also known as the Conventual Franciscans, Friars Minor Conventual ("Conventual Franciscans"). Defendant St. Anthony Province has its principal place of business in Maryland. At relevant times, it conducted activities in Erie County, New York, including operating Cardinal O'Hara High School.

6. Defendant St. Anthony of Padua Province, Franciscan Fathers Minor Conventual, U.S.A ("St. Anthony N.Y.") is a New York not-for-profit corporation which at relevant times conducted activities in Erie County, New York, including operating

Cardinal O'Hara High School.

7. Defendant Franciscan Fathers Minor Conventuals of Buffalo, N.Y. ("Conventual Franciscans Buffalo") is a New York not-for-profit corporation which at relevant times conducted activities in Erie County, New York, including operating Cardinal O'Hara High School.

8. Defendant Franciscan Fathers Minor Conventual, St. Anthony of Padua Province ("St. Anthony MA") is a Massachusetts non-profit corporation with its principal place of business in Massachusetts. At relevant times, St. Anthony MA conducted activities in Erie County, New York, including operating Cardinal O'Hara High School.

9. Defendant Order of Friars Minor Conventual, St. Anthony of Padua Province, U.S.A., Inc. ("St. Anthony MD") is a Maryland non-stock corporation with its principal place of business in Maryland. At relevant times, St. Anthony MD conducted activities in Erie County, New York, including operating Cardinal O'Hara High School.

10. Defendant Franciscan Minor Conventuals of MD. Inc. of Ellicott City ("Conventual Franciscans Ellicott City") is a Maryland non-stock corporation with its principal place of business in Maryland. At relevant times, Conventual Franciscans Ellicott City conducted activities in Erie County, New York, including operating Cardinal O'Hara High School.

11. Defendant Our Lady of Angels Province, U.S.A. ("Our Lady Province") is a province of the Conventual Franciscans with its principal place of business located in Ellicott City, Maryland. Our Lady Province was formed in 2014 by the union of the Immaculate Conception Province of the Conventual Franciscans and St. Anthony Province and is the successor to St. Anthony Province.

12. Defendant Franciscan Friars-Our Lady of the Angels Province, Inc. ("Our Lady Inc.") is a Maryland non-stock corporation with its principal place of business in Maryland. Our Lady Inc. was incorporated in 2014, and is a successor to one or more of the following Defendants: St. Anthony N.Y.; Conventual Franciscans Buffalo; St.

Anthony MA; St. Anthony MD; and/or Conventual Franciscans Ellicott City.

13. Defendant Cardinal O'Hara High School is a Roman Catholic high school in Tonawanda, Erie County, New York, within the Diocese of Buffalo. During the period 1978-1982, Cardinal O'Hara High School was operated by Defendants Diocese of Buffalo; St. Anthony Province; St. Anthony N.Y.; Conventual Franciscans Buffalo; St. Anthony MA; St. Anthony MD; and/or Conventual Franciscans Ellicott City.

FACTS COMMON TO ALL CLAMS

14. In or around September 1978, when she was 14 years old, Plaintiff began matriculating at Cardinal O'Hara High School, a school within and under the auspices of Defendant Diocese of Buffalo.

15. During the times relevant to the allegations set forth herein, Father Mark S. Andrzejczuk, O.F.M., Conv. ("Father Andrzejczuk"), was employed as a priest and teacher at Defendant Cardinal O'Hara High School. Father Andrzejczuk was a member of the Conventual Franciscans and, in particular, of the St. Anthony Province. Father Andrzejczuk died in 2011.

16. Through his positions at, within, or for the Defendants, Father Andrzejczuk was put in direct contact with Plaintiff, a student at Cardinal O'Hara High School. Father Andrzejczuk was assigned to teach her. It was under these circumstances that Plaintiff came to be under the direction and control of Father Andrzejczuk, who used his position of authority and trust over Plaintiff to sexually abuse and harass her.

17. On numerous occasions, during the years from approximately 1978 through 1981, while Plaintiff was a minor, Father Andrzejczuk, while acting as a priest, counselor, teacher, trustee, director, officer, employee, agent, servant and/or volunteer of the Defendants sexually assaulted, sexually abused and/or had sexual contact with Plaintiff in violation of the laws of the State of New York. The abuse occurred approximately twice a week for approximately three years, beginning when Plaintiff was approximately 14 years old and ending when she was approximately 17 years old.

18. On multiple occasions, Father Andrzejczuk wrote passes excusing Plaintiff from another teacher's class and, during the class period from which he had excused her, Father Andrzejczuk sexually assaulted, sexually abused and/or had sexual contact with Plaintiff in an empty classroom at Cardinal O'Hara High School.

19. At all times material hereto, Father Andrzejczuk, was under the direct supervision, employ and/or control of Defendants.

20. All the Defendants knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Father Andrzejczuk who sexually abused Plaintiff.

21. Defendants had the responsibility to supervise and/or direct priests serving at Cardinal O'Hara High School, and specifically, had a duty not to aid a pedophile such as Father Andrzejczuk, by assigning, maintaining and/or appointing him to a position with access to minors.

22. All Defendants, individually, jointly and/or severally, violated various New York statutes, including, but not limited to N.Y. Soc. Serv. Law §§ 413 and 420, which require school officials and teachers to report suspected cases of child abuse and impose liability for failure to report.

23. Plaintiff suffered personal physical and psychological injuries and damages as a result of Father Andrzejczuk's actions, as well as other damages related thereto, as a result of her childhood sexual abuse.

24. As a direct result of the Defendants' conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, problems sleeping, concentrating, low self-confidence, low self-respect, low self-esteem, feeling of worthlessness, feeling shameful, and embarrassed, feeling alone and isolated, losing faith in God, feeling estranged from the church, struggling with alcohol problems, battling anorexia, feeling helpless, and hopeless, problems with sexual intimacy, relationship

problems, trust issues, feeling confused and angry, the feeling that the good things have been ruined, feeling sad and depressed, feeling anxiety, having panic attacks, crying, feeling dirty, used, and damaged, feeling suicidal, having flashbacks, feeling like she took the wrong road, feeling that her innocence was stolen, and feeling that her life was ruined. Plaintiff was prevented and will continue to be prevented from performing her normal daily activities and obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and, on information and belief, has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Father Andrzejczuk's sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm she suffered as a result.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Negligent Hiring/Retention/Supervision/Direction

25. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 24 as if fully set forth herein.

26. The sexual abuse of children by adults, including priests and teachers, is foreseeable.

27. By establishing, staffing, and/or operating Defendant Cardinal O'Hara High School, encouraging the enrollment and instruction of Plaintiff in Cardinal O'Hara High School, accepting her as a student at Cardinal O'Hara High School, and holding Cardinal O'Hara High School out to be a safe environment for learning and engaging in youth activities, Defendants entered into an express and/or implied duty to provide a reasonably safe environment for Plaintiff and assumed the duty to protect and care for her.

28. Defendants negligently hired, retained, directed, and supervised Father Andrzejczuk when they knew or should have known that he posed a threat of sexual

abuse to children.

29. Defendants knew or should have known of Father Andrzejczuk's propensity for the conduct which caused Plaintiff's injuries prior to the injuries' occurrence.

30. Father Andrzejczuk sexually assaulted, sexually abused and/or had sexual contact with Plaintiff on Defendants' premises, including in classrooms at Cardinal O'Hara High School.

31. Defendants were put on notice of Father Andrzejczuk's improper and inappropriate actions with Plaintiff, including by the frequent passes he wrote to excuse her from other teachers' classes.

32. Defendants owed a duty of care to all persons, including Plaintiff, who were likely to come within the influence of Father Andrzejczuk, in his role as a teacher, priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Father Andrzejczuk did not abuse his authority as a teacher, priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer to injure minors by sexual assault, battery, and/or abuse.

33. At all times material hereto, Defendants' actions were willful, wanton, malicious, reckless and/or outrageous in their disregard for the rights and safety of Plaintiff.

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

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

SECOND CAUSE OF ACTION
Negligence/Gross Negligence

36. Plaintiff repeats and realleges each and every allegation set forth in

paragraphs 1 through 24 as if fully set forth herein.

37. Defendants knew, or were negligent in not knowing, that Father Andrzejczuk posed a threat of sexual abuse to children.

38. The acts of Father Andrzejczuk described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his employment, appointment, and/or agency with the Defendants.

39. Defendants owed Plaintiff, at the relevant times a minor, a duty to protect her from Father Andrzejczuk's sexual deviancy, both prior to and/or subsequent to Father Andrzejczuk's misconduct.

40. Defendants' willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.

41. Defendants:

- a. gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others;
- b. failed adequately to supervise the activities of Father Andrzejczuk;
- c. permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, upon premises or with instrumentalities under their control; and
- d. allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

42. At all times material hereto, with regard to the allegations contained herein, Father Andrzejczuk was under the direct supervision, employ and/or control of Defendants.

43. At all times material hereto, Defendants' actions were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

44. As a direct and/or indirect result of said conduct, Plaintiff has suffered the injuries and damages described herein.

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

THIRD CAUSE OF ACTION
Breach of Fiduciary Duty

46. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 24 as if fully set forth herein.

47. Through his positions at the Defendants, Father Andrzejczuk was put in direct contact with Plaintiff, then a minor student at Cardinal O'Hara High School, specifically being assigned to teach her both lay academic subjects and religious instruction, including religious training, spiritual guidance and/or counseling expounded by the Roman Catholic Church. It was under these circumstances that Plaintiff came to be under the direction and control of Father Andrzejczuk, who used his position of authority and trust over Plaintiff to sexually abuse and harass her.

48. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and all the Defendants herein.

49. Pursuant to their fiduciary relationship, Defendants were entrusted with the well-being, care, and safety of Plaintiff.

50. Pursuant to their fiduciary relationship, Defendants assumed a duty to act in the best interests of Plaintiff.

51. Defendants breached their fiduciary duties to Plaintiff.

52. At all times material hereto, Defendants' actions and/or inactions were

willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff.

53. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

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

FOURTH CAUSE OF ACTION
Breach of Non-Delegable Duty

55. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 24 as if fully set forth herein.

56. Plaintiff, when she was a minor, was placed in the care of all of the Defendants for the purposes of, *inter alia*, providing plaintiff with a safe environment to receive a lay education and spiritual instruction, training, guidance and/or counseling. There existed a non-delegable duty of trust between Plaintiff and Defendants.

57. Plaintiff was a vulnerable child when placed within the care of the Defendants.

58. As a consequence, the Defendants were in the best position to prevent Plaintiff's abuse, and to learn of Father Andrzejczuk's repeated sexual abuse of Plaintiff and stop it.

59. By virtue of the fact that Plaintiff was sexually abused as a parishioner/student, Defendants breached their non-delegable duty to Plaintiff.

60. At all times material hereto Father Andrzejczuk was under the direct supervision, employ and/or control of the defendants.

61. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

62. By reason of the foregoing, Defendants, jointly, severally and/or in the

alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

FIFTH CAUSE OF ACTION

Negligent Infliction of Emotional Distress

63. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 24 as if fully set forth herein.

64. As described aforesaid, the actions of Defendants, their predecessors and/or successors, agents, servants and/or employees were conducted in a negligent and/or grossly negligent manner.

65. Defendants' actions endangered Plaintiff's safety and caused her to fear for her own safety.

66. As a direct and proximate result of Defendants' actions, which included but were not limited to, negligent and/or grossly negligent conduct, Plaintiff suffered the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

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

SIXTH CAUSE OF ACTION

Breach of Duty *in Loco Parentis*

68. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 24 as if fully set forth herein.

69. Plaintiff when she was a minor was entrusted by her parents to the control of Defendants for the purposes of *inter alia*, providing Plaintiff with a lay education and spiritual instruction, training, counseling and/or spiritual guidance as expounded by the Roman Catholic Church. Defendants owe – and owed -- a duty to students entrusted to them to adequately supervise them to prevent foreseeable injuries to their students. As a

result, Defendants owed a duty to Plaintiff *in loco parentis*.

70. Defendants breached their duty *in loco parentis*.

71. At all times material hereto, said Defendants' actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

72. As a direct result of Defendants' conduct, Plaintiff has suffered the injuries and damages described herein.

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

SEVENTH CAUSE OF ACTION

Breach of Statutory Duty to Report Abuse under Soc. Serv. Law §§ 413, 420

74. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 24 as if fully set forth herein.

75. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420, Defendants had a statutorily imposed duty to report reasonable suspicion of abuse of children in their care.

76. Defendants breached that duty by knowingly and willfully failing to report reasonable suspicion of abuse by Father Andrzejczuk of children in their care.

77. As a direct and/or indirect result of said conduct, Plaintiff has suffered injuries and damages described herein.

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

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

- A. Awarding compensatory damages in an amount to be proved at trial, but not less than \$50 million;

- B. Awarding punitive damages to the extent permitted by law, in the amount of \$250 million;
- C. Awarding prejudgment interest to the extent permitted by law;
- D. Awarding costs and fees of this action, including attorneys' fees, to the extent permitted by law; and
- E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Dated: February 22, 2019
New York, New York

Respectfully Submitted,

/s/ Paul J. Hanly, Jr. _____
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