

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

SUMMONS

-----X
DAVID ROGALSKI,

Plaintiff(s) designate
ERIE County as the place of
trial.

Plaintiff(s),

The basis of the venue is
Plaintiff Residence

-against-

ROMAN CATHOLIC DIOCESE OF BUFFALO and ST.
AGATHA CATHOLIC CHURCH,

Plaintiff(s) reside at
1619 South Park Ave #4
Buffalo, NY 14220

Defendant(s).


Index No.:
Date Summons &
Complaint Filed:

-----X

To the above named Defendant(s)

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorney(s) within twenty days after the services of this summons exclusive of the day of service, where service is made by delivery upon you personally within the state, or within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Port Washington, NY
September 16, 2019

By: 
Brett A. Zekowski
Parker Waichman LLP
Office & Post Office Address:
6 Harbor Park Drive
Port Washington, NY 11050
(516) 466-6500
Our File # 9008720

TO:
Roman Catholic Diocese of Buffalo
795 Main Street
Buffalo, NY 14203

St. Agatha Catholic Church
54 Alamo Place
Buffalo, NY 14220

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

-----X
DAVID ROGALSKI,

Plaintiff,

-against-

CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA
CATHOLIC CHURCH,

Defendants.
-----X

VERIFIED COMPLAINT

Index No.:
Jury Trial Demanded

Plaintiff, DAVID ROGALSKI, by his attorneys Parker Waichman LLP, complaining of the defendants, respectfully alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

1. At the time of the commencement of this action plaintiff, DAVID ROGALSKI, was a resident of the County of Erie, State of New York.

2. At the time of the incident(s) giving rise to this complaint, plaintiff was a resident of the County of Erie, State of New York.

3. This action is timely pursuant to CPLR 214-g.

4. At all times herein mentioned, defendant, ROMAN CATHOLIC DIOCESE OF BUFFALO, was a religious corporation organized pursuant to the Religious Corporations Law, with its principal office at 795 Main Street, Buffalo, County of Erie, State of New York.

5. At all times herein mentioned, defendant, ST. AGATHA CATHOLIC CHURCH, was a religious corporation organized pursuant to the Religious Corporations Law with its principal office 54 Alamo Place, Buffalo, County of Erie, State of New York.

6. At all times herein mentioned, defendant, ST. AGATHA CATHOLIC CHURCH, was a religious order within and under the authority of defendant, ROMAN CATHOLIC

DIOCESE OF BUFFALO.

7. At all times herein mentioned, defendant, ROMAN CATHOLIC DIOCESE OF BUFFALO, oversaw, managed, controlled, directed and operated, defendant, ST. AGATHA CATHOLIC CHURCH.

8. At all times herein mentioned, defendant, ST. AGATHA CATHOLIC CHURCH, oversaw, managed, controlled, directed and operated, defendant, ST. AGATHA CATHOLIC CHURCH

9. At all times herein mentioned, defendant, ROMAN CATHOLIC DIOCESE OF BUFFALO, managed, supervised and controlled those who were employed or otherwise worked for defendant, ST. AGATHA CATHOLIC CHURCH, including, but not limited to priests, nuns and other personnel and volunteers, both while they were on premises and engaged in off-premises activities related to their employment with defendant, ROMAN CATHOLIC DIOCESE OF BUFFALO.

10. At all times herein mentioned, defendant, ST. AGATHA CATHOLIC CHURCH, managed, supervised and controlled those who were employed or otherwise worked for defendant, ST. AGATHA CATHOLIC CHURCH, including, but not limited to priests, nuns and other personnel and volunteers, both while they were on premises and engaged in off-premises activities related to their employment with defendant, ROMAN CATHOLIC DIOCESE OF ALBANY.

11. From on or about January 1, 1981 through on or about December 31, 1983, plaintiff, DAVID ROGALSKI, an infant, was a resident under the care of ROMAN CATHOLIC DIOCESE OF ALBANY.

12. From on or about January 1, 1981 through on or about December 31, 1983, plaintiff, DAVID ROGALSKI, an infant was a resident under the care of defendant, ST. AGATHA CATHOLIC CHURCH.

13. At all times herein mentioned and relevant to the allegations set forth herein Father Donald W. Becker, was a priest assigned by defendant, ROMAN CATHOLIC DIOCESE OF BUFFALO, to defendant, ST. AGATHA CATHOLIC CHURCH.

14. At all times herein mentioned and relevant to the allegations set forth herein, Father Donald W. Becker, was a priest at defendant, ST. AGATHA CATHOLIC CHURCH.

15. At all times herein mentioned, Father Donald W. Becker, was employed by defendant, ROMAN CATHOLIC DIOCESE OF BUFFALO.

16. At all times herein mentioned, Father Donald W. Becker, was employed by the defendant, ST. AGATHA CATHOLIC CHURCH.

17. Through his position with defendant, ROMAN CATHOLIC DIOCESE OF BUFFALO, Father Donald W. Becker, was put in direct contact with plaintiff, DAVID ROGALSKI, then an infant.

18. Through his position with defendant, ST. AGATHA CATHOLIC CHURCH, Father Donald W. Becker, was put in direct contact with plaintiff, DAVID ROGALSKI, then an infant.

19. That on or about January 1, 1981 through December 31, 1983, Father Donald W. Becker, sexually abused the plaintiff, DAVID ROGALSKI.

20. At all times herein mentioned, Father Donald W. Becker, was under the management, supervision, employ, direction and/or control of defendant, ROMAN CATHOLIC DIOCESE OF BUFFALO.

21. At all times herein mentioned, Father Donald W. Becker, was under the management, supervision, employ, direction and/or control of defendant, ST. AGATHA CATHOLIC CHURCH.

22. Defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA

CATHOLIC CHURCH, knew and/or reasonably should have known and/or knowingly condoned and/or covered up, the inappropriate and unlawful sexual activities of Father Donald W. Becker, who sexually abused the plaintiff, DAVID ROGALSKI, while plaintiff, DAVID ROGALSKI, was an infant.

23. Defendant, ROMAN CATHOLIC DIOCESE OF BUFFALO, had the responsibility to manage, supervise, control and/or direct priests assigned to defendant, ST. AGATHA CATHOLIC CHURCH.

24. Defendant, ST. AGATHA CATHOLIC CHURCH, had the responsibility to manage, supervise, control and/or direct priests assigned to defendant, ST. AGATHA CATHOLIC CHURCH.

25. At all relevant times, defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, had a duty not to aid pedophiles such as Father Donald W. Becker, by assigning, maintaining and/or appointing he/she to positions in which he/she would have access to minors.

26. At all relevant times, Father Donald W. Becker, used his position as a priest to entice, take control of plaintiff, DAVID ROGALSKI, and sexually assault, sexually abuse or have sexual contact with plaintiff, DAVID ROGALSKI, while plaintiff was a minor.

27. 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.

28. Plaintiff suffered physical and psychological injuries and damages as a result of his childhood sexual abuse by Father Donald W. Becker.

29. As a direct result of defendants' conduct, plaintiff suffered and will continue to

suffer great pain of body and mind, severe and permanent emotional distress and physical manifestations of emotional distress. As a result of his childhood sexual abuse, plaintiff has been prevented from obtaining the full enjoyment of life, has incurred and will continue to incur expenses for medical and psychological treatment, therapy and counseling and has incurred and will continue to incur loss of income and/or loss of earning capacity.

30. Because of his childhood sexual abuse, plaintiff DAVID ROGALSKI is unable to fully describe all of the details of that abuse and the extent of the harm that he suffered as a result.

**AS AND FOR A FIRST CAUSE OF ACTION
NEGLIGENT HIRING, RETENTION, SUPERVISION AND/OR DIRECTION**

31. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 30 as if fully set forth herein.

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

33. Defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, at all relevant times represented and held out to the public, defendant, ST. AGATHA CATHOLIC CHURCH, to be safe places for learning and participating in youth activities.

34. At all relevant times, defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, were each under an express and/or implied duty to protect and care for plaintiff, DAVID ROGALSKI.

35. Defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, negligently hired, retained, directed and supervised Father Donald W. Becker, because they knew or should have known that Father Donald W. Becker, posed a threat of sexual abuse of children such as plaintiff.

36. Defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, knew or should have known that Father Donald W. Becker, had a propensity to engage in the conduct which caused plaintiff's injuries prior to or about the time of the occurrence of these injuries.

37. Defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, owed a duty of care to all minors, including plaintiff, who were likely to come under the influence or supervision of Father Donald W. Becker, in their role as teacher, priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer to ensure that Father Donald W. Becker, did not use their assigned positions to injure minors by sexual assault, sexual abuse or sexual contact with minors.

38. Father Donald W. Becker, sexually assaulted, sexually abused and/or had sexual contact with plaintiff, DAVID ROGALSKI, on defendants' premises, including ST. AGATHA CATHOLIC CHURCH.

39. Defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, were put on notice of Father Donald W. Becker's improper and inappropriate actions toward minors.

40. Defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, were negligent in failing to properly supervise Father Donald W. Becker.

41. Defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, were negligent in failing to properly manage Father Donald W. Becker.

42. Defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, were negligent in failing to properly control Father Donald W. Becker.

43. At all relevant times, defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, were willful, wanton, malicious, reckless and/or

outrageous in their disregard for the rights and safety of plaintiff.

44. As a direct and proximate result of defendants' above described omissions, plaintiff has suffered and will continue to suffer the injuries described herein.

45. By reason of the foregoing, the defendants are liable to plaintiff jointly, severally and/or in the alternative, for compensatory damages and punitive damages, together with costs and interest in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A SECOND CAUSE OF ACTION
NEGLIGENCE/GROSS NEGLIGENCE**

46. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 45 as if fully set forth herein.

47. Defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, knew or negligently failed to know that Father Donald W. Becker, posed a threat of sexual abuse to children.

48. The acts of Father Donald W. Becker, as described above, were undertaken, enabled by, and/or during the course of their respective employment, assignment, appointment and/or agency with defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH.

49. Defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH:

- a. gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons in work involving risk of harm to others;
- b. failed to adequately supervise the activities of Father Donald W. Becker;
- c. failed to adequately supervise and safeguard minors attending defendant, ST.

AGATHA CATHOLIC CHURCH;

- d. permitted and/or intentionally failed and/or neglected to prevent negligent or tortious conduct by persons, whether or not their servants, agents or employees, upon premises under their control; and
- e. allowed the acts of omission and/or commission of any or all of the allegations set forth in this Complaint to occur.

50. At all relevant times Father Donald W. Becker, was under the supervision, employ, direction and/or control of defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH.

51. At all relevant times, defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, were wanton, willful, malicious, reckless and outrageous in their disregard for the rights and safety of plaintiff, which conduct was equivalent to criminal conduct.

52. As a direct and/or indirect result of said conduct, plaintiff has suffered injuries and damages as described herein.

53. 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 in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**THIRD CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY**

54. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 53 as if fully set forth herein.

55. At all relevant times, there existed a fiduciary relationship of trust, confidence, and

reliance between plaintiff, on the one hand. and defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, on the other, based upon the entrustment of plaintiff, while he was a minor child, to the care and supervision of the defendants and each of them, as a parishioner, worshiper, invitee, attendee or guest at defendant, ST. AGATHA CATHOLIC CHURCH, and as a student, invitee, attendee or guest at defendant, ST. AGATHA CATHOLIC CHURCH. The entrustment of the plaintiff to the care and supervision of the defendants and each of them, while plaintiff was a minor child, required the defendants to assume a fiduciary role and to act in the best interests of the plaintiff and to protect him while he was a minor and vulnerable child.

56. Pursuant to their fiduciary relationship with plaintiff, defendants were entrusted with the well-being, care and safety of plaintiff.

57. Pursuant to their fiduciary relationship with plaintiff, defendants assumed a duty to act in the best interests of plaintiff.

58. Defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, breached their fiduciary duties to plaintiff.

59. At all relevant times, the actions and/or inactions of defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, were willful, malicious, wanton, reckless and outrageous in their disregard for the rights and safety of plaintiff.

60. As a direct result of defendants' conduct, plaintiff has suffered injuries and damages described herein.

61. 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 in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**FOURTH CAUSE OF ACTION
BREACH OF NON-DELEGABLE DUTY**

62. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 61 as of fully set forth herein.

63. When he was a minor, plaintiff, DAVID ROGALSKI, was placed in the care of defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, for the purposes of providing plaintiff with a safe environment in which to participate in youth activities and receive an education. There was thus created a non-delegable duty of trust between plaintiff and defendants.

64. Plaintiff, DAVID ROGALSKI, was a vulnerable child when placed in the care of defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH.

65. Defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, and each of them, were in the best position to prevent plaintiff from being abused and/or to have learned of the repeated abuse by Father Donald W. Becker, and to have stopped it.

66. As evidenced by the fact that plaintiff, DAVID ROGALSKI, was sexually abused as a minor child entrusted to the care of the defendants, these defendants breached their non-delegable duty to plaintiff.

67. At all relevant times, Father Donald W. Becker, was under the supervision, employment, direction and/or control of defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH.

68. As a result of the sexually abusive conduct of Father Donald W. Becker, plaintiff,

DAVID ROGALSKI, suffered the injuries and damages described herein, the full extent of which is unknown at present.

69. 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 in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**FIFTH CAUSE OF ACTION
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

70. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 69 above as if set forth at length herein.

71. As described above, defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH and Father Donald W. Becker, acted in a negligent and/or grossly negligent manner.

72. The actions of defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH and Father Donald W. Becker, endangered plaintiff's safety and caused him to fear for his own safety.

73. As a direct and proximate result of the actions of defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, which included, but were not limited to, negligent and/or grossly negligent conduct, plaintiff suffered severe injuries and damages as described herein, including, but not limited to, mental and emotional distress.

74. 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 costs and interest in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**SIXTH CAUSE OF ACTION
BREACH OF DUTY *IN LOCO PARENTIS***

75. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 74 as if set forth at length herein.

76. While he was a minor, plaintiff was entrusted by his parents to the control of the defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, for the purposes of providing plaintiff with an education and allowing him to participate in youth activities sponsored by defendants. During the times that plaintiff was at school and during the times that he participated in youth activities, he was under the supervision and control of defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH. These defendants, and each of them, at all relevant times and now, owed and owe a duty to children entrusted their care to act *in loco parentis* and to prevent foreseeable injuries.

77. Defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, breached their duty to act *in loco parentis*.

78. At all relevant times the actions of defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, were willful, malicious, wanton, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of plaintiff.

79. As a direct result of defendants' conduct, plaintiff, DAVID ROGALSKI, has suffered the injuries and damages described herein.

80. 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 in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**SEVENTH CAUSE OF ACTION
BREACH OF STATUTORY DUTY PURSUANT TO NEW YORK
SOCIAL SERVICES LAW §§ 413, 420 TO REPORT ABUSE**

81. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 80 as if fully set forth herein.

82. Pursuant to N.Y. Social Services Law §§413, 420, defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, had a statutory duty to report the reasonable suspicion of abuse of children in their care.

83. Defendants, ROMAN CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA CATHOLIC CHURCH, breached that duty by knowingly and willfully failing to report reasonable suspicion of abuse by Father Donald W. Becker, of children in their care.

84. As a direct and/or indirect result of said conduct, plaintiff has suffered injuries and damages as described above.

85. By reason of the foregoing, defendants jointly, severally and/or in the alternative are liable to plaintiff for compensatory damages and punitive damages, together with costs and interest in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, plaintiff demands judgment against defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proven at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- B. Awarding punitive damages to the extent permitted by law;

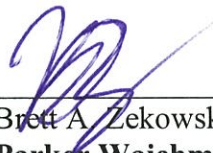
- C. Awarding prejudgment interest to the extent permitted by law;
- D. Awarding costs and fees of this action, including attorneys' fees, to the extent permitted by law;
- E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

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

Dated: Port Washington, New York
September 16, 2019

Yours, etc.



Brett A. Zekowski
Parker Waichman LLP
Attorneys for Plaintiff(s)
Office & Post Office Address
6 Harbor Park Drive
Port Washington, NY 11050
516-466-6500
Our File # 9008720

Parker Waichman LLP

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 10/14/2019

Index No.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

DAVID ROGALSKI,

Plaintiff(s),

-against-

CATHOLIC DIOCESE OF BUFFALO and ST. AGATHA
CATHOLIC CHURCH,

Defendant(s).

SUMMONS AND VERIFIED COMPLAINT

Certification per 22NYCRR §130-1.1a

Brett A. Zekowski
Parker Waichman LLP
Attorneys for Plaintiff(s)
6 Harbor Park Drive
Port Washington, NY 11050
(516) 466-6500

To:
Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated:
Attorney(s) for

PLEASE TAKE NOTICE

NOTICE OF

ENTRY that the within is a (certified) true copy of a entered in the office of the Clerk of the within named
Court on 2019 .

NOTICE that an Order of which the within is a true copy will be presented to the Hon. , one of the

OF

SETTLEMENT judges of the within named Court, at ,

, on
2019, at M.

Dated: Port Washington, New York
September 16, 2019

Parker Waichman LLP
Attorneys for Plaintiff(s)