

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR MIAMI-
DADE COUNTY, FLORIDA

CASE NO. 05-16739-CA 06

JOHN DOE 21,

Plaintiff,

vs.

ARCHDIOCESE OF MIAMI, INC.,

Defendant.

COMPLAINT

Plaintiff, JOHN DOE NO 21, brings this Complaint against Defendant, ARCHDIOCESE OF MIAMI, INC., as follows:

PARTIES AND JURISDICTION

1. This is a claim for damages in excess of \$15,000.00, exclusive of interest, costs, and attorney's fees.

2. Plaintiff JOHN DOE is sui juris. Because this Complaint concerns sexual abuse upon a minor, Plaintiff brings this Complaint under a fictitious name to protect his identity.

3. Defendant ARCHDIOCESE OF MIAMI, INC. (the "ARCHDIOCESE") is a non-profit Florida Corporation responsible for the interests of the Roman Catholic Church ("The Church") in Broward and Miami-Dade Counties.

BACKGROUND

4. The Church offers many opportunities for minors and families to become active and involved in Church activities. As a result, priests and clergy have abundant and frequent contacts with minors, individually and in groups.

5. Because of the opportunities to be with minors, The Church attracts many truly caring and giving individuals; however, at the same time, service in The Church attracts an

extraordinary number of pedophiles, child molesters and sex abusers.

6. Officials and religious figures at the highest levels of The Church are well aware of the attraction of The Church to those who will do serious harm to minors.

7. Such persons who will do serious harm to minors seek employment by The Church as clergy, where they will obtain privacy with minors and control over them. As religious figures, they wield enormous influence over minors, who are required to address them as “Father” or such other terms connoting love and authority.

8. Religious figures in The Church are bestowed with an heir of infallibility, and are considered conduits for parishioners to make a connection with the deity and live more meaningful lives.

9. As a result, when these seemingly infallible holy men commit unspeakable, perverted sexual acts with minors, it has an extraordinarily traumatic effect on the victims, psychologically and emotionally.

10. Instead of exercising due care and diligence to protect minors under these circumstances from the serious harm described above, The Church gives clergy complete discretion and freedom to have personal and private encounters with minors. At the same time, The Church has done nothing to screen abusers or protect minors from the sexual predators who infiltrate its ranks.

11. Quite the opposite, The Church has gone to great lengths to protect “its own”. It is the custom, policy and practice of the Roman Catholic Church, through its cardinals, bishops, priests and other officials and agents, to conceal instances of child sexual abuse and complaints by victims. It zealously maintains the secrecy of the horrifying truth of rampant child sexual abuse in The Church, by among other things:

- Failing to disclose complaints to law enforcement officials, parishioners and the public;
- Maintaining secret archives and files of evidence of sex abuse, accessible only to bishops;

- Instructing Church officials in destruction of incriminating documents and spoilation of evidence regarding sexual abuse by clergy;
- Transferring sex offending clergy to The Church facilities in other locations where their pasts would not be known to parishioners, and the abusers would have a “fresh start” with a new group of vulnerable children;
- Threatening and coercing victims and their families to withdraw complaints and retract allegations of sexual abuse;
- Paying “hush money” to victims and their families, in exchange for promises of non-disclosure and confidentiality.

12. Each of the acts and practices set forth above are done to protect and shelter the abuser; obstruct justice; conceal criminal conduct; evade prosecution; avoid being compelled by criminal and civil courts to turn over information or allegations regarding child sexual abuse; avoid public awareness and scandal about pedophile clergy; and avoid financial loss.

13. The Church’s conduct is outrageous given the enormous trust and confidence placed in its religious figures. The Church actively solicits and encourages this trust and confidence from parishioners and the public.

SEXUAL ABUSE OF JOHN DOE

14. JOHN DOE was born in 1956. In his childhood, at approximately 7-8 years old, JOHN’s father was diagnosed with multiple sclerosis. At the same time, his mother suffered from a mental disorder. His father died when JOHN was 11 years old. In those difficult and trying circumstances, JOHN turned to the Church for guidance and assistance. He sought counseling at the Catholic Welfare Bureau, where he was assigned to Father Neil “Gus” Doherty. Father Doherty was responsible for drug and alcohol counseling at the Catholic Welfare Bureau.

15. Father Doherty established a relationship of trust and confidence with JOHN. Indeed, as a troubled pre-adolescent and adolescent, Father Doherty was the sole adult whom JOHN felt he could trust, and, as a result, he welcomed the guidance and friendship Father

Doherty offered.

16. In many instances as a minor, JOHN would be taken out by Father Doherty socially to various residences, including a residence in Palm Beach County. Father Doherty would on these occasions ply JOHN with marijuana, drugs and alcohol, causing JOHN to pass out.

17. While JOHN was unconscious on these occasions, Father Doherty sexually abused JOHN.

18. Upon information and belief, Doherty sexually abused other boys before and during the time he abused JOHN. Upon information and belief, the ARCHDIOCESE knew or should have known that Doherty was sexually abusing boys and it took no action to protect JOHN.

19. Upon information and belief, at all relevant times, the ARCHDIOCESE had knowledge of Doherty's history of sexually perversity.

20. Upon information and belief, the ARCHDIOCESE concealed information that was pertinent and necessary for JOHN to bring civil claims in this matter. Upon information and belief, after finding out about the abuse, the ARCHDIOCESE actively took steps to conceal the abuse.

21. Doherty and JOHN were in a fiduciary relationship. Doherty was in a position of trust and confidence with JOHN. JOHN looked to Doherty for counseling and guidance.

22. The ARCHDIOCESE was in a fiduciary relationship with JOHN. The ARCHDIOCESE was in a position of trust and confidence with JOHN. JOHN looked to the ARCHDIOCESE and its representatives for counseling and guidance. In addition, the ARCHDIOCESE knew that JOHN had a special and privileged relationship with Doherty. The ARCHDIOCESE owed JOHN a fiduciary duty to:

- a) Investigate and warn JOHN of the potential for harm from Doherty;
- b) Disclose its awareness of facts regarding Doherty that created a likely

potential for harm;

- c) Disclose its own negligence with regard to hiring, supervision and retention of Doherty;
- d) Provide a safe environment for JOHN where he would be free from abuse; and
- e) Protect JOHN from exposure to harmful individuals like Doherty.

23. The ARCHDIOCESE breached its fiduciary duty to JOHN by failing to:

- a) Investigate and warn JOHN of the potential for harm from Doherty;
- b) Disclose its awareness of facts regarding Doherty that created a likely potential for harm;
- c) Disclose its own negligence with regard to hiring, supervision and retention of Doherty;
- d) Provide a safe environment for JOHN where he was free from abuse; and
- e) Protect JOHN from exposure to harmful individuals like Doherty.

24. The ARCHDIOCESE actively and fraudulently concealed information pertinent and relevant to claims relating to the sexual abuse in this matter for the purpose of protecting itself from civil liability and evading same.

COUNT I
NEGLIGENCE

25. Plaintiff repeats and realleges Paragraphs 1 through 24 above.

26. At all material times, the ARCHDIOCESE owed a duty to Plaintiff to use reasonable care to insure the safety, care, well being and health of the minor JOHN while he was under the care, custody or in the presence of the ARCHDIOCESE. The ARCHDIOCESE's duties encompassed the hiring, retention and supervision of Doherty and otherwise providing a safe environment for JOHN to live.

27. The ARCHDIOCESE breached these duties by failing to protect the minor JOHN

from sexual assault and lewd and lascivious acts committed by the agent and employee of the ARCHDIOCESE, Doherty.

28. At all relevant times, the ARCHDIOCESE knew or in the exercise of reasonable care should have known that Doherty was unfit, dangerous, and a threat to the health, safety and welfare of the minors entrusted to his counsel, care and protection.

29. With such actual or constructive knowledge, the ARCHDIOCESE provided Doherty unfettered access to JOHN and gave him unlimited and uncontrolled privacy.

30. At all relevant times, the ARCHDIOCESE created an environment which fostered child sexual abuse against children it had a duty to protect, including JOHN.

31. At all relevant times, the ARCHDIOCESE had inadequate policies and procedures to protect children it was entrusted to care for and protect, including JOHN.

32. As a direct and proximate result of the ARCHDIOCESE's negligence, JOHN suffered severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

WHEREFORE, Plaintiff demands judgment against Defendant, the ARCHDIOCESE OF MIAMI, INC. for compensatory damages, costs and such other and further relief as this Court deems proper. Plaintiff intends to move to amend the Complaint in accordance with Florida Statutes to assert a claim for punitive damages.

COUNT II
RESPONDEAT SUPERIOR / VICARIOUS LIABILITY

33. Plaintiff repeats and realleges Paragraphs 1 through 24 above.

34. Doherty was at all material times hereto the employee, appointee and agent of the ARCHDIOCESE.

35. Doherty was authorized to be alone with JOHN, to take him overnight to various residences, and to have unfettered and unsupervised access to young JOHN.

36. The acts described above occurred on the premises of land operated and/or

controlled by the ARCHDIOCESE (or at a place authorized by the ARCHDIOCESE), occurred during working hours, and occurred in the course and scope of the performance of Doherty's duties. Doherty's initial contact and relationship with JOHN was in furtherance of the business of the ARCHDIOCESE. In addition, Doherty was authorized to touch JOHN and display affection in a manner consistent with providing counseling, spiritual guidance and leadership. Doherty extended and converted his authorized touching into the sexual abuse of JOHN as described above.

37. Upon information and belief, Doherty was authorized to touch JOHN in an improper manner.

38. The wrongful acts of Doherty were committed in the actual or apparent course and scope of his employment or agency with the ARCHDIOCESE.

39. The wrongful acts were committed while Doherty was doing what his employment or agency contemplated.

40. Doherty acted with willful or reckless disregard for JOHN'S welfare.

41. Doherty's conduct was outrageous, going beyond all bounds of decency.

42. As a result of Doherty's conduct, JOHN suffered severe emotional distress.

43. Under the doctrine of respondeat superior, the ARCHDIOCESE is responsible for the negligent, reckless and intentional actions of its servant, Doherty, committed in the actual or apparent scope of his duties.

WHEREFORE, Plaintiff demands judgment against Defendant, the ARCHDIOCESE OF MIAMI, INC. for compensatory damages, costs and such other and further relief as this Court deems just and proper. Plaintiff intends to move to amend the Complaint in accordance with Florida Statutes to assert a claim for punitive damages.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial in this action.

Dated: August 17th, 2005.

Respectfully submitted,

HERMAN & MERMELSTEIN P.A.
18205 Biscayne Blvd.
Suite 2218
Miami, Florida 33160
Tel: 305-931-2200
Fax: 305-931-0877

By: /s/ Jeffrey M. Herman .
Jeffrey M. Herman
Florida Bar No. 521647
Stuart S. Mermelstein
Florida Bar No. 947245