

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

JOHN DOE NO. 26,

CASE NO.:

06 - 224 49 CA 02

Plaintiffs,

vs.

ARCHDIOCESE OF MIAMI, INC., ARCHDIOCESE
OF MIAMI, A CORPORATION SOLE, and
ARCHBISHOP FAVALORA AS CORPORATE SOLE
OF THE ARCHDIOCESE OF MIAMI,

Defendants.

COMPLAINT

Plaintiff, JOHN DOE NO. 26, brings this Complaint against Defendants, ARCHDIOCESE OF MIAMI, INC., ARCHDIOCESE OF MIAMI, A CORPORATION SOLE, and ARCHBISHOP FAVALORA AS CORPORATE SOLE OF THE ARCHDIOCESE OF MIAMI, as follows:

PARTIES AND JURISDICTION

1. This is an action for damages arising from the sexual abuse of a child by a Priest with the ARCHDIOCESE OF MIAMI. The abuse was committed by Father ANTHONY MERCIECA when JOHN DOE NO. 26 was an altar boy at ST. JAMES CHURCH in North Miami, Florida.

2. This action seeks compensation in excess of \$10 million.

3. 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.

4. Defendant ARCHDIOCESE OF MIAMI, INC. is a non-profit Florida Corporation. Defendants ARCHDIOCESE OF MIAMI, INC., ARCHDIOCESE OF MIAMI, A CORPORATION SOLE and ARCHBISHOP FAVALORA AS CORPORATE SOLE OF THE

ARCHDIOCESE OF MIAMI (collectively the “ARCHDIOCESE” or the “ARCHDIOCESE OF MIAMI”) are responsible for the interests of the Roman Catholic Church in Broward and Miami-Dade Counties. Father MERCIECA, at all relevant times, was employed by and acting under the authority of the ARCHDIOCESE. The ARCHDIOCESE is also responsible for and controls the operations of ST. JAMES CHURCH in North Miami, Florida.

SEXUAL ABUSE OF JOHN DOE

5. JOHN DOE was born in 1965. As a boy, he and his family were devout Catholics. He became an altar boy at ST. JAMES when he was approximately 10 years old, and continued as an altar boy for approximately 2-3 years. At the Church and while serving as an altar boy, JOHN was befriended and groomed by MERCIECA, whom he and the other boys affectionately called Father “Tony.”

6. When JOHN was approximately 12-13 years old, he rode his bicycle to ST. JAMES on Saturday for altar boy practice. After practice, Father “Tony” asked JOHN if he would like to go on a bike ride with him. JOHN accepted, excited and in awe that a Priest would go on a bike ride with him. They rode their bicycles around the neighborhood of the Church. As they returned to the Church, their conversation turned to the bell tower of the Church; JOHN asked if there were actual bells in the tower. MERCIECA invited JOHN to the top of the bell tower to show him what was there. When they reached the bell tower, JOHN sat down. Father MERCIECA came over and touched JOHN’s penis over his shorts, whereupon JOHN pushed MERCIECA’s hand away. Father MERCIECA persisted and unzipped JOHN’s shorts, at which time he fondled JOHN and performed oral sex on him. Afterward, MERCIECA instructed JOHN not to tell anyone what he had done.

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

8. Upon information and belief, at all relevant times, the ARCHDIOCESE had knowledge of MERCIECA's history of sexual perversity and inappropriate contact with children.

9. Upon information and belief, the Defendants 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 Defendants actively took steps to conceal the abuse.

10. Despite its knowledge, the ARCHDIOCESE took no action against MERCIECA and continued to give him unfettered access to young boys.

11. At all relevant times, the ARCHDIOCESE had a policy of concealment in response to discovery of child sexual abuse or allegations of abuse. Among other things, a 1962 "confidential" policy document issued by the Vatican to all Catholic Bishops, including the Archbishop of the ARCHDIOCESE, instructed that allegations or incidents of sexual abuse were to be maintained in the "strictest" secrecy, and threatened those who violated this policy with excommunication. The policy was intended to conceal sexual abuse by clergy.

12. Upon information and belief, the ARCHDIOCESE, through its officers and agents, destroyed incriminating documents and files intending to conceal the sexual abuse of priests known to abuse minors, including MERCIECA.

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

14. 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 MERCIECA in light of JOHN's service as an altar boy.

15. The ARCHDIOCESE owed JOHN a fiduciary duty to:

- a) Investigate and warn JOHN of the potential for harm from MERCIECA;

- b) Disclose their awareness of facts regarding MERCIECA that created a likely potential for harm;
 - c) Disclose their own negligence with regard to hiring, supervision and retention of MERCIECA;
 - d) Provide a safe environment for JOHN where he would be free from abuse; and
 - e) Protect JOHN from exposure to harmful individuals like MERCIECA.
16. The ARCHDIOCESE breached its fiduciary duty to JOHN by failing to:
- a) Investigate and warn JOHN of the potential for harm from MERCIECA;
 - b) Disclose its awareness of facts regarding MERCIECA that created a likely potential for harm;
 - c) Disclose their own negligence with regard to hiring, supervision and retention of MERCIECA;
 - d) Provide a safe environment for JOHN where he would be free from abuse; and
 - e) Protect JOHN from exposure to harmful individuals like MERCIECA.

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

COUNT I
NEGLIGENCE

18. Plaintiff JOHN DOE repeats and realleges Paragraphs 1 through 17 above.

19. 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 MERCIECA and otherwise

providing a safe environment for JOHN.

20. 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, MERCIECA.

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

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

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

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

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

COUNT II
RESPONDEAT SUPERIOR / VICARIOUS LIABILITY

26. Plaintiff JOHN DOE repeats and realleges Paragraphs 1 through 17 above.

27. MERCIECA was at all material times hereto the employee, appointee and agent of the ARCHDIOCESE.

28. MERCIECA was authorized to be alone with JOHN and to have unfettered and

unsupervised access to young JOHN in the rectory and elsewhere.

29. 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 MERCIECA's duties. MERCIECA's contact and relationship with JOHN was in furtherance of the business of the ARCHDIOCESE. In addition, MERCIECA was authorized to touch JOHN and display affection in a manner consistent with providing counseling, spiritual guidance and leadership. MERCIECA extended and converted this authorized touching into the sexual abuse of JOHN as described above.

30. Upon information and belief, MERCIECA was authorized to touch JOHN in an improper manner.

31. The wrongful acts of MERCIECA was committed in the actual or apparent course and scope of his employment or agency with the ARCHDIOCESE.

32. The wrongful acts were committed while MERCIECA was doing what his employment or agency contemplated.

33. MERCIECA acted with willful or reckless disregard for JOHN's welfare.

34. MERCIECA's conduct was outrageous, going beyond all bounds of decency.

35. As a result of MERCIECA's conduct, JOHN suffered severe emotional distress.

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

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

DEMAND FOR JURY TRIAL

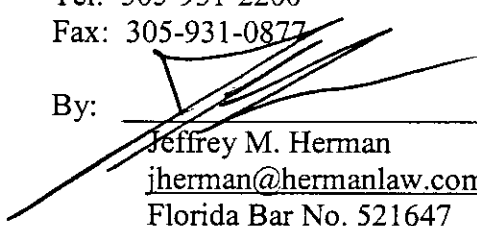
Plaintiff demands a jury trial in this action.

Dated: October 25, 2006.

Respectfully submitted,

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

By: _____


Jeffrey M. Herman
jherman@hermanlaw.com
Florida Bar No. 521647
Stuart S. Mermelstein
smermelstein@hermanlaw.com
Florida Bar No. 947245