

Terry Ridley, Hunt, Hamlin & Ridley,
Newark, NJ (Thomas Green)
Vimal Kumar Shah, McElroy, Deutsch,
Mulvaney & Carpenter, LLP, Morristown, NJ
(Michael Martin)

FACTS & ALLEGATIONS In 1995, plaintiff Marina Materowski, 23, was hired as a Hudson County Corrections Officer and commenced working at the Hudson County Jail. In March 2005, an incident wherein she alleged that two male colleagues made repeated derogatory comments, including calling her a "damn hussy" and "ho." She also claimed that one of the men grabbed her off an office chair, pulled her onto the floor and physically restrained her by straddling her and grabbing her wrists, while the other male employee stood by and watched the alleged assault without intervening. Materowski, who is white, also claimed that her supervisors, who are black, made vulgar and racist comments to her and retaliated against her when she complained.

Materowski sued Hudson County, the Department of Corrections and the two officers alleged to have been involved in the underlying assault, alleging assault and sexual harassment. Her complaint sounded in civil rights violations and also alleged racial discrimination on the part of the supervisors.

INJURIES/DAMAGES The plaintiff claimed she was injured during the assault and eventually left work on a disability pension. She also sought all of the compensatory and punitive damages provided by the applicable civil rights statutes.

The defense vigorously contested the plaintiff's contention that she suffered physical injury in the alleged assault incident that contributed to her disability pension.

RESULT Settlement was reached for the sum of \$317,000. The principle settlement was for \$305,000 and an additional \$12,000 was included to satisfy a workers' compensation claim. The settlement agreement was explicit in admitting no liability or wrongdoing on the part of any party.

EDITOR'S NOTE This report is based on court records and information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

—Jon Steiger

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RETALIATION

Wrongful Termination — Whistleblower — ERISA

Ex-pool technician claimed retaliation for jury service

VERDICT \$93,866
ACTUAL \$95,126

CASE Justin Jinorio v. American Pool Enterprises Inc., No. HUD-L-6377-09
COURT Hudson County Superior Court, NJ
JUDGE Edward T. O'Connor, Jr.
DATE 4/6/2011

PLAINTIFF
ATTORNEY(S) Ty Hyderally, Hyderally & Associates, P.C.,
Montclair, NJ
John J. Zidziunas, Law Offices of John J.
Zidziunas, LLC, Montclair, NJ

DEFENSE
ATTORNEY(S) Mark W. Catanzaro, German Gallagher &
Murtagh, P.C., Moorestown, NJ

FACTS & ALLEGATIONS In September 2009, plaintiff Justin Jinorio was terminated from his employment position with American Pool Enterprises Inc. Jinorio had worked as a pool maintenance technician at American Pool since February 2009. Jinorio had been summoned for Hudson County jury service in July 2009, and since that was the height of the company's "pool season," Jinorio said his employer encouraged him to get out of the service. Jinorio was unable to do so, and was ultimately selected to serve as foreman on a murder trial that lasted for slightly more than two weeks.

Jinorio said that he nevertheless accommodated his employer's service schedules by working each day after jury service, sometimes until 10:00 or 11:00 p.m. Jinorio also said that when his jury service concluded and he had resumed his normal work schedule, his employer expressed dissatisfaction with his previous level of availability and accessibility. Jinorio said that his employer sent him text messages throughout his jury service that concerned work-related issues and then criticized Jinorio for the timeliness of his responses.

Following his termination in September, the plaintiff almost immediately sued American Pool Enterprise Inc. for jury service retaliation pursuant to a state statute specifically providing a cause of action for such retaliation (the statute of limitations for this claim is 90 days from the retaliatory act). The complaint also stated a claim under a specific section of the "whistleblower statute" that concerns conduct of employers inconsistent with important public policy issues and ERISA claims for overtime wages relative to the overtime the plaintiff worked during his jury service.

The defense denied that the plaintiff was terminated in retaliation for reasons pertaining to his jury service and

claimed that the termination was for job-performance issues.

The plaintiff met the "performance issues" claim by demonstrating the lack of any corroborative evidence other than the defendant's alleged after-the-fact assertion of deficiencies in his work performance.

INJURIES/DAMAGES The plaintiff's claim for overtime wages was in the approximate amount of \$300. He sought compensatory damages for "front" and "back" pay on account of the termination of his employment.

Because of the assertion of the whistleblower claim pursuant to the New Jersey Conscientious Employee Protection Act, the plaintiff was permitted to seek emotional damages without the necessity of full-blown psychological or medical evidence.

The defense claimed that the plaintiff was not damaged.

RESULT The court directed a verdict on the overtime wage claim and awarded the plaintiff \$300. The jury then returned a plaintiff's verdict on all remaining claims and awarded \$93,866 in damages. With the addition of the overtime wage pay and \$960 in prejudgment interest, Jinorio's total recovery was \$95,126.

JUSTIN JINORIO \$50,980 past lost earnings
\$20,886 future lost earnings
\$22,000 emotional damages
\$93,866

DEMAND \$25,000
OFFER \$500

TRIAL DETAILS Trial Length: 7 days
Trial Deliberations: 6 hours
Jury Vote: 5-1 causes of action; 6-0 damages

POST-TRIAL The plaintiff has yet to file a post-trial application for attorney fees as afforded by the pertinent statutes underlying the causes of action; that application is anticipated to exceed \$200,000.

Plaintiff's counsel said that according to Judge O'Connor, the jury's approximate 125 questions was the most questions asked by a jury in his experience.

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

—Jon Steiger

WHISTLEBLOWER

Conscientious Employee Protection Act — Government

Prosecutor claimed retaliation for reporting misconduct

VERDICT \$1,300,000

CASE Michele D'Onofrio v. Township of Warren, No. MRS-L-2927-08

COURT Morris County Superior Court, NJ

JUDGE Stephan C. Hansbury

DATE 5/10/2011

PLAINTIFF

ATTORNEY(S) Nancy Erika Smith, Smith Mullin, PC, Montclair, NJ

DEFENSE

ATTORNEY(S) Dominick Bratti, Wilentz, Goldman & Spitzer, P.A., Woodbridge, NJ

FACTS & ALLEGATIONS On Jan. 1, 2008, Michele D'Onofrio, a lawyer, was not reappointed to the municipal prosecutor position that she had held in Warren Township continuously since 2002. On Feb. 13, 2007, D'Onofrio had sent a memo to the township administrator expressing concerns about the actions and behavior of the local municipal court judge. When the township took no action, D'Onofrio filed a judicial conduct complaint with the Administrative Office of the Courts. Two weeks later, the township posted her job with an announcement that the township was seeking applications for a municipal prosecutor.

D'Onofrio sued Warren Township under the Conscientious Employees Protection Act for wrongful termination.

Plaintiff's counsel alleged that D'Onofrio was first subjected to retaliation in early 2007, after she cooperated with a probe by the Federal Bureau of Investigation and the Attorney General's office into allegations that the township's municipal court judge had improperly allowed police to search the home of a Warren resident who was divorcing and had asked police to enforce a visitation order. That resident later learned that the municipal court judge had not issued a search warrant but had given police an oral authorization to search the home. D'Onofrio had also complained to the Administrative Office of the Court about the same judge's judicial conduct, suggesting that the judge was inebriated during a trial.

The defense denied that the selection of another attorney to serve as municipal prosecutor was a reprisal or retaliatory. The defense noted that in 2007 the plaintiff left the politically active law firm where she had previously worked and where she worked when she was first appointed.

INJURIES/DAMAGES The plaintiff sought compensatory and punitive damages for the wrongful termination of her position as municipal prosecutor.

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