

Employment – Defense Verdict

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Employment Litigation

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Aaron R. White and Dawn M. Piccirilli of Boyle | Shaughnessy Law were appointed as Special Assistant Attorney Generals to represent the Suffolk County District Attorney's Office in this case involving claims of gender discrimination, retaliation, and violations of the Federal and Massachusetts Equal Pay Acts. Michael C. Palermo assisted to prepare the case for trial. The Plaintiff, a former prosecutor at the Suffolk County District Attorney's Office claimed that she was discriminated against by being paid less than similarly situated males and that she was fired for her complaint of gender discrimination. The case was tried over eight days before the Honorable Justice Rya Zobel at the United States District Court, District of Massachusetts. The unanimous jury returned in favor of the defendant on all four counts.

The Plaintiff, a seven-year prosecutor, who had risen the ranks from District Court to a line Assistant District Attorney in the Suffolk County District Attorney's Office's prestigious Gang Unit, claimed that she was discriminated against by being paid less than similarly situated males. At trial, the Plaintiff introduced evidence that she was paid less than eight male prosecutors assigned to different units who had either equal or less seniority than she. Attorneys White and Piccirilli demonstrated to the jury that each of these eight male prosecutors had different responsibilities, skill, and experience. For example, several of the alleged "comparators" argued appeals to the Massachusetts Supreme Judicial Court and Appeals Court, and one served as an intelligence officer in the United States Armed Forces in Afghanistan for four years. The evidence also demonstrated that in 2014 the Plaintiff was paid less than six female assistant district attorneys with equal or less seniority. The evidence presented on behalf of the Suffolk County District Attorney's Office demonstrated further that it paid its Assistant District Attorneys based on numerous legitimate and non-discriminatory factors, with merit being chief among them. The unanimous jury agreed, and rejected the Plaintiff's claims that her gender factored into her salary. In addition, the jury rejected the Plaintiff's claims that her pay violated the Federal and Massachusetts Equal Pay Acts, which are strict liability claims and can be proven without an intent to discriminate.

The jury further rejected the Plaintiff's retaliation claim, that her termination was substantially motivated by her complaints of alleged discrimination. There was no dispute that the Suffolk County District Attorney's Office terminated the Plaintiff on Monday morning, September 22, 2014 following a going-away event at a bar the previous Friday night, September 19, 2014. There was also no dispute that the plaintiff was fired as the result of her interaction with the Suffolk County District Attorney's Chief of Staff at the going-away party. The Plaintiff, however, claimed that she was fired that following Monday morning because she told the

Chief of staff that she was paid unfairly due to her sex and a colleague was paid unfairly due to his race. The evidence presented by the Suffolk County District Attorney's Office, however, proved that the Plaintiff was fired due to the totality of the circumstances and her conduct that was unbecoming of an Assistant District Attorney. Specifically, the evidence demonstrated that the Plaintiff, while intoxicated, entered into a profanity-laced tirade directed at the Chief of Staff, when she angrily denounced a female colleague as undeserving of her promotion and raise, accused the DA's Office of political favoritism, and alleged sexism and racism. The evidence further demonstrated that the Plaintiff was aggressive and hostile, and refused multiple requests to discuss her grievances at a more appropriate time and place.

Attorney White secured key electronic communications during the course of discovery. Specifically, Attorney White located text messages from a third-party that the Plaintiff had sent during the weekend following the altercation and her termination. The Plaintiff withheld these communications during discovery. The text messages demonstrated that the Plaintiff did not have a clear memory of the altercation and that she "hope[d]she didn't say worse." The text messages also demonstrated that the Plaintiff admitted to being "black[ed] out" and that she had "told off" the Chief of Staff.

Attorney Piccirilli's cross-examination of the Plaintiff on the substance of her texts and on the Plaintiff's failure to produce certain highly relevant texts undermined the Plaintiff's credibility at Trial. In addition, cross-examination of the Plaintiff on her bar tab from the night of the incident, showed that within 10-20 minutes prior to the altercation, the Plaintiff had bought a round of four tequila shots. The cross examination forced the Plaintiff to admit that she had, in fact, consumed "too much alcohol" before approaching the Chief of Staff.

The Plaintiff alleged that she suffered economic losses of approximately \$400,000.00 because she no longer had the opportunity to vest in the state pension system. Attorney White cross-examined the Plaintiff's expert statistician/economist and established that the economist refused to take into account the Plaintiff's substantially higher salary in the private sector and her prior contributions to the retirement system in calculating her alleged losses. The expert was also challenged on his failure to statistically prove that discrimination in pay in fact occurred, and his failure to statistically analyze the reasonable probability of the Plaintiff ever becoming eligible for the pension benefit the Plaintiff sought as a measure of damages.

The Plaintiff also claimed that she had lasting emotional distress and anxiety as a result of her termination, including a fear of being in close proximity to the Suffolk County District Attorney's Office's headquarters and seeing executive staff members at functions. Attorneys White and Piccirilli again undermined the Plaintiff's credibility by eliciting testimony from numerous witnesses that following her termination, the Plaintiff continued to attend functions involving the Suffolk County District Attorney, played on its softball team, and participated in an office-wide charity event. The plaintiff further sought punitive damages, which the trial

judge dismissed as a result of a directed verdict filed by the defendant.

In the end, the jury unanimously concluded that the Suffolk County District Attorney's Office did not discriminate against the Plaintiff, and that it had legitimate, non-retaliatory reasons to terminate the Plaintiff and did in fact terminate her for these legitimate reasons. It rejected the Plaintiff's argument that her termination was substantially motivated by the nature of her complaints of discrimination as opposed to the manner with which she communicated her grievances with the office. The jury's decision also affirmed the propriety of the Suffolk County District Attorney's Office's merit-based and gender-neutral hiring, promotion, and pay policies.