

**EMPLOYMENT****Retaliation, Employment - Whistleblower****Woman claimed she was fired for reporting of deficiencies****MEDIATION** **\$600,000****CASE** Carol Ann Russo v. Township of
Belleville, No. ESXL6172-03**COURT** Essex County Superior Court, NJ**JUDGE** John Sands Esq.**DATE** 05/09/2006**PLAINTIFF****ATTORNEY(S)** **Richard Flaum**, DiFrancesco, Bateman,
Coley, Yospin, Kunzman, Davis &
Lehrer, P.C., Warren, NJ**DEFENSE****ATTORNEY(S)** John Badagliacca Esq., Garrity Graham
Favetta, Montclair, NJ

FACTS & ALLEGATIONS The plaintiff is Carol Ann Russo, 50s, a social worker who was employed by the township of Belleville 1980 to 2003. Her primary responsibilities related to providing social welfare services to the indigent and neediest population of the township.

In May 2002, Russo became Director of the Department of Citizens' Services. A part of the department's function was to oversee a newly created partnership between the township of Belleville and Clara Maass Medical Center. This partnership was created in part to provide indigent citizens of Belleville access to the medical center for purposes of health screenings and physicals and immunizations for children. In facilitating these services, the Department of Citizens' Services worked in conjunction with the Health Department. As part of her job as director, Russo was often

contacted Health Officer Thomas Longo with various concerns about the partnership.

In October 2002, Raymond Kimble was named Town Manager. Upon assuming this position, he appointed Health Officer Longo to the position of Director of the newly created Department of Health & Human Services. Longo became Russo's immediate supervisor. By Jan. 29, 2003, the town terminated Russo, and she was escorted from the building where she worked by Police Chief Rotunda, who was the acting Town Manager while Kimble was on vacation.

Russo sued the township of Belleville for retaliation under New Jersey's Conscientious Employee Protection Act, N.J.S.A. 34:19-1, et seq. Russo alleged that between May 2002 and Dec. 12, 2002, she faced resistance from the Health Department and its Health Officer Thomas Longo when she pointed out deficiencies that were the responsibility of the Health Department to correct in its supervisory capacity, such as nurses talking on cell phones during immunizations, nurses failing to change bed papers between physical exams, and the poor condition of dozens of children's immunization records. Russo claimed that Longo often would avoid meeting with her to address these issues, and that Russo personally had to organize or locate patients' charts at Claire Maass when nurses frequently and excessively called in sick. Russo pointed to memos at the hospital identifying those and other issues and Belleville Health Department's failures to cooperate in rectifying them.

Russo contended that she reported the deficiencies to the Town Manager, Thomas Banker, as well as to Banker's

successor, Raymond Kimble. She also reported these concerns to representatives of the mayor and council in an effort to obtain the cooperation of the Health Department to ensure that the indigent population was served properly, but the Health Department continued to fail to cooperate.

Russo contended that after Longo became her immediate supervisor on Dec. 12, 2002, he engaged in a pattern of behavior which negatively affected Russo's employment until her termination date on Jan. 29, 2003. Russo maintained that she was made to punch a time card for the first time in 25 years. She also claimed that Longo took away her municipal car privileges and moved her office from the first to third floor, which negatively affected her relationship with her elderly and disabled clients who had to walk up two flights of stairs to see her. Russo also claimed that she was ordered to work on the "Dial-a-Ride" job, a primarily clerical position, which as an executive, she was not previously required to do.

Russo's counsel also argued that Longo's authority over her was questionable, contending that his appointment to the Director position of the Department of Health & Human Services was procedurally improper. Russo's counsel pointed out that Longo's appointment by Kimble was made despite the fact that an ordinance creating the position with a concomitant salary had not been executed.

The defense denied that Russo was terminated in retaliation for her actions. The defense maintained that the town eliminated the department that she was running.

Russo's countered that the town never indicated that the Department of Citizens' Services was to be eliminated. Russo's counsel contended that the town council voted in Jan. 28, 2003 on the issue of whether to eliminate her position and the vote did not pass; but the next day, Town Manager Kimble, while he was on vacation, ordered the Police Chief Rotunda to file Russo.

INJURIES/DAMAGES Russo was fired about four years short of the point when she could retire with pension benefits. Russo claimed that she suffered economic losses and emotional distress.

After being fired Russo took a job several months later doing clerical work at a high school. After about six months she left working at the school, claiming she was distraught and depressed. She found another job working with her husband.

Russo's counsel near close of discovery sought election of remedy under SEPA, seeking back pay of \$200,000 to \$300,000 which included pension benefits, and front pay of about \$600,000 as well as punitive damages and reinstatement of her job.

VERDICT INFORMATION The parties settled the matter in mediation three weeks prior to trial for \$600,000.

PLAINTIFF

EXPERT(S) Phillip Witt, clinical psychology,
Somerdale, NJ

DEFENSE

EXPERT(S) none

EDITOR'S COMMENTS Counsel for the defense did not respond to a faxed draft of this report or a phone call.

ESSEX COUNTY

EMPLOYMENT

Retaliation — Gender Discrimination

Assessor faced harassment for refusing to lower property tax

SETTLEMENT \$250,000

CASE Susan Yancey- Disbrow v. Borough of Roseland, No. L-000726-03
COURT Essex County Superior Court, NJ
JUDGE Hector E. DeSoto
DATE 11/13/2006

PLAINTIFF

ATTORNEY(S) **Richard P. Flaum** (lead), DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis & Lehrer, P.C., Warren, NJ
Lisa M. Fittipaldi, DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis & Lehrer, P.C., Warren, NJ

DEFENSE

ATTORNEY(S) **David L. Fox**, Fox and Fox LLP, Livingston, NJ
Daniel J. Zirrih, Fox and Fox LLP, Livingston, NJ

FACTS & ALLEGATIONS In 2001, plaintiff Susan Yancey-Disbrow, 60s, a tax assessor for the Borough of Roseland, claimed a city councilman pressured her to lower taxes on his campaign manager's property. When she refused she claimed she was subjected to various forms of harassment. In 2003, she filed a lawsuit for hostile work environment and was terminated later that same year.

Yancey-Disbrow sued the Borough of Roseland for gender discrimination, retaliation and hostile work environment.

She claimed that when she refused the councilman's request she was harassed by Roseland's administrator, the councilman and Roseland's financial officer. Prior to the issue with the councilman, Yancey-Disbrow claimed that she worked 12 problem-free years there. After the incident, she claimed Roseland officials made her job more difficult by denying her the opportunity to go to professional seminars, which she had previously regularly attended because of meritless claims that she was showing up to work late and leaving early. And they refused her raises, she claimed.

Yancey-Disbrow claimed that she became the target of retaliation after she sued. Among the retaliatory acts she claimed occurred included tampering with her paper and computer files. She was later terminated in 2003 when the town council voted to merge her position with a tax assessor in West Orange. The

new assessor was a younger male with less experience than Yancey-Disbrow, according to plaintiff's counsel.

Defense counsel denied the allegations. They pointed to an Attorney General's investigation in which Yancey-Disbrow's allegations were not substantiated.

Defense counsel stated Yancey- Disbrow's position was eliminated to save money. Previous to this lawsuit, services have been merged such as animal control and recreational services. The elimination of the position was thus purely a financial one. Today Roseland is still working on merging positions with other towns as a way to save money.

INJURIES/DAMAGES *emotional distress*

Yancey-Disbrow sought unspecified damages for emotional distress. She claimed she had trouble eating and sleeping and suffered from depression as a result of the conduct of the defendant's employees.

Yancey-Disbrow sought past and future lost wages, medical and pension benefits. Plaintiff's economist tabulated the sum at \$180,000. There was no issue of wage mitigation.

RESULT The parties reached a settlement for \$250,000 to be paid for by Roseland's insurance carrier. Defense attorney David Fox said that he believed his client would have prevailed at trial, but the settlement was motivated by the insurance company's desire to settle, rather than pay trial fees.

EDITOR'S NOTE Information from a Newark Star-Ledger article was used in this report.

—Stephen DiPerte

FEDERAL

FIRST AMENDMENT

Establishment Clause — School — Civil Rights

Plaintiff claimed child's religious song was protected speech

DECISION **Liability only**

CASE O.T., a minor child, by and through her next friends, Robert T. Turton and Maryann Turton v. Frenchtown Elementary School District Board of Education; Catherine Lent; and Joyce Brennan, No. 05-2623
COURT U.S. District Court, District of New Jersey, Trenton, NJ
JUDGE Freda Wolfson
DATE 12/11/2006