

DEFENSE**ATTORNEY(S)**

Lisa Mann, Modrall, Sperling, Roehl,
Harris & Sisk, Albuquerque, NM
Alex C. Walker, Modrall, Sperling, Roehl,
Harris & Sisk, P. A., Albuquerque, NM

FACTS & ALLEGATIONS For a year and a half, plaintiffs Moira Daly, Kathryn Hunter, Maria Marquart and Rosann Williams were employed in various roles by the New Mexico Scorpions minor-league hockey team. They claimed that they were forced to listen to inappropriate stories and rampant vulgar language and that they were paid less than, and denied privileges enjoyed by, their male counterparts. Ultimately, they all resigned or were terminated.

Daly, Hunter, Marquart and Williams sued the team, several of its former male staff members, and its owner, Albuquerque, N.M.-based W.D. Sports Inc. They alleged that they were subjected to sexual harassment and gender discrimination.

The defendants contended that the plaintiffs weren't discriminated against and never complained about the office environment while working for the Scorpions. They claimed that any hostility among employees arose from personality conflicts, not sexual discrimination. They contended that both the men and women used foul language in the office and that, though some language was not professional in certain environments, it was not outrageous in a hockey team work environment.

According to defense counsel, 16 of the plaintiffs' 26 claims were dismissed before or during the trial.

INJURIES/DAMAGES The plaintiffs claimed that they were subjected to sexual harassment and gender discrimination. Three of the four plaintiffs were diagnosed with post-traumatic stress disorder. All four sought recovery of back pay, front pay, damages for their emotional suffering and punitive damages.

RESULT The jury rendered a defense verdict. It found that the plaintiffs were not subjected to discrimination.

PLAINTIFF**EXPERT(S)**

Nancy Davidson, PhD, psychology/
counseling, Albuquerque, NM
Brian McDonald, PhD, economics,
Albuquerque, NM
Linda Winter, post-traumatic stress disorder,
Albuquerque, NM

DEFENSE**EXPERT(S)**

Ann Rose, Ph.D., psychology/counseling,
Albuquerque, NM

EDITOR'S NOTE Plaintiff's counsel did not respond to a faxed draft of this report or a phone call.

—Gregg Kaysen

NEW YORK**DISCRIMINATION****Retaliation — Wrongful Termination**

Worker claimed complaints led to his termination

MIXED VERDICT \$325,000

CASE

Lincoln Jattan v. Queens College of the City
University of New York, Samuel Yehaskel &
Maxine Rothenberg, No. 12367/95

COURT

Queens Supreme

JUDGE

Valerie Brathwaite Nelson

DATE

8/29/2005

PLAINTIFF**ATTORNEY(S)**

Robert J. Valli Jr., Leeds, Morelli &
Brown, Carle Place, NY

DEFENSE**ATTORNEY(S)**

Steven L. Banks, Assistant Attorney
General, New York, NY
Clement J. Colucci III, Assistant Attorney
General, New York, NY

FACTS & ALLEGATIONS In 1991, plaintiff Lincoln Jattan, 43, an accountant who worked in the general accounting office of Queens [N.Y.] College, approached the college's director of human resources, Maxine Rothenberg, and reported that he was being subjected to disparate treatment. Jattan claimed that he was the only worker whose time sheet was kept in a central location, rather than in the employee's possession. He contended that the time sheet's location was specified by the general accounting office's head, Samuel Yehaskel. He also reported an incident in which Yehaskel witnessed him eating in the office and scolded him.

In response, Yehaskel reported that Jattan was frequently tardy, that he was insubordinate and that he resisted supervision.

In January 1994, Jattan submitted a written complaint that alleged that a part-time secretary was submitting time sheets that falsely reported that she had working during the prior summer. He contended that the secretary was not entitled to full-time medical benefits, but that the altered time sheets allowed her to receive those benefits. He claimed that Yehaskel was aware of the secretary's actions. As a result, the secretary was fired.

In March 1994, Yehaskel issued a memorandum that established deadlines for the processing of payment requests and a memorandum that specified that tardiness would result in disciplinary action.

Yehaskel subsequently claimed that Jattan did not satisfy all of the established deadlines and that he was occasionally tardy. He contended that the issues were addressed in a June 1994

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meeting with Jattan, but that Jattan merely cursed and stormed out of the office. Soon thereafter, Yehaskel initiated disciplinary proceedings that addressed Jattan's alleged tardiness and deadline shortcomings. The resultant hearing was conducted in summer 1994, and it was determined that Jattan was insubordinate and that he had engaged in misconduct. He was issued a 20-day suspension. When the suspension ended, Rothenberg reassigned Jattan. He was assigned to the college's buildings and grounds department.

In April 1995, Jattan was transferred to the college's human-resources department, where he performed clerical work. The next month, he filed a union grievance that alleged that he was working "out-of-title." The college contended that his duties had not changed during his tenure, and the grievance was denied.

On March 12, 1996, Jattan's supervisor, Marilyn Burgmaier, witnessed him conduct a personal telephone call. Jattan was told to end the call, but he refused. He was subsequently terminated.

Jattan sued Rothenberg, Yehaskel and the college's operator, Queens College of the City University of New York. He alleged that he was wrongfully terminated, that he was subjected to discrimination, that his termination was a retaliatory response to his complaints, and that the defendants violated his rights guaranteed by 42 U.S.C. 1983 and the New York State Human Rights Law.

Jattan, a Trinidadian Christian, claimed that he was subjected to national-origin, race and religion-based discrimination. He contended that white, Jewish supervisors overworked him and assigned deadlines that were shorter than those assigned to other workers. He claimed that his workload was five times greater than the amount that could be capably performed.

Jattan also claimed that his transfers were unnecessary and that his supervisors issued constant, unnecessary, unfounded reports that criticized his behavior and work. He contended that he endured harsh treatment and that the treatment worsened after February 1995, when Yehaskel's supervisor retired. He claimed that the supervisor had been buffering the discipline and treatment that were rendered by Yehaskel.

Jattan further claimed that his termination was a retaliatory response to his complaints, including the complaint that addressed the part-time secretary's actions.

Jattan's counsel contended that Rothenberg initiated Jattan's termination. He noted that Rothenberg was the head of the college's human-resources department and, as such, he argued that she was a policy-maker. He also contended that Rothenberg and Yehaskel created and promoted false information that jeopardized Jattan's job and enacted an event sequence that led to his termination.

The defendants noted that Jattan was a civil-service employee and that, as such, his termination had to be pre-approved by multiple high-ranking officials who worked in the City University of New York's hierarchy. They contended that Rothenberg and Yehaskel did not initiate, or contribute to, the termination process.

The defendants also contended that Jattan's suspension and termination were solely products of his own misconduct and his unwillingness to accept supervision. They claimed that

Jattan's termination followed a long personal telephone call that he refused to terminate. In response, Jattan claimed that the telephone call was reasonable because he was discussing a matter that was related to cancer that his father was suffering.

The defendants further contended that Jattan cursed during interactions with supervisors and that such behavior occurred at least three times. In response, Jattan claimed that only one such episode occurred—at the time of his first transfer.

INJURIES/DAMAGES Jattan claimed that he was wrongfully terminated, that he was subjected to discrimination, that his termination was a retaliatory response to his complaints, and that the defendants violated his rights guaranteed by 42 U.S.C. 1983 and the New York State Human Rights Law.

Jattan contended that he suffered residual emotional distress and depression. His expert psychiatrist opined that the conditions resembled the symptoms of post-traumatic stress disorder, that they were caused by the defendants' actions and that their effect would persist.

Jattan sought recovery of more than \$300,000 for his past lost wages. He also sought recovery of unspecified damages for his emotional suffering.

The defendants' expert psychiatrist opined that Jattan did not endure trauma and that he did not suffer post-traumatic stress disorder.

RESULT The jury rendered a mixed verdict. It found that Jattan's transfers, suspension and termination were, to some degree, retaliatory responses to his complaints. It determined that the college was liable, but that Rothenberg and Yehaskel were not liable. Jattan was awarded \$325,000, all for his past lost wages.

DEMAND \$2,000,000
OFFER None

TRIAL DETAILS Trial Length: 3 weeks
Jury Deliberations: 2 days
Jury Composition: 1 male, 5 female;
2 Asian, 1 Asian-Pacific Islander, 3 white

**PLAINTIFF
EXPERT(S)** Charles Rosenbloom, M.D., psychiatry,
Brooklyn, NY

**DEFENSE
EXPERT(S)** Allen Reichman, M.D., psychiatry,
Roslyn, NY

POST-TRIAL Defense counsel has moved to set aside the verdict. Defense counsel has also moved for a new trial. Plaintiff's counsel has moved for recovery of attorney fees.

EDITOR'S NOTE This report includes information that was gleaned from an article that appeared in Newsday.

—Joanna Bonfiglio