

Our File No. C17819
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Attorneys for Plaintiff, Carmen Fortunato

RECEIVED / FILED
Superior Court of New Jersey

JUL 19 2007

CIVIL CASE MANAGEMENT
UNION COUNTY

CARMEN FORTUNATO,

Plaintiff,
- vs -

ELIZABETH BOARD OF EDUCATION

Defendant.

) SUPERIOR COURT OF NEW JERSEY
) LAW DIVISION UNION COUNTY
) DOCKET NO.

UNN-L-2500-07
Civil Action

)
)
) COMPLAINT
)
)
)

Carmen Fortunato, residing at 65 Melwex Street, Belleville, New Jersey, by way of complaint against the defendant, says:

STATEMENT OF FACTS

1. Carmen Fortunato was employed by the Elizabeth Board of Education in or around 1997. As of June 2006, Carmen Fortunato worked for the Elizabeth Board of Education for approximately eight years and nine months. During that time, Carmen Fortunato did not receive any negative performance reviews and continued to receive salary increases in accordance with the union contract under which his salary and other benefits were governed.

2. Each year prior to 2006, Carmen Fortunato received his contract for the following year in or around April or May.

3. Carmen Fortunato was performing his duties in accordance with the requirements of his job title as of June 2006.

4. On Monday, June 19, 2006 without warning, the director of Carmen Fortunato's department Joseph Pellegrino was terminated.
5. On June 20, 2006 each individual in the department in which Carmen Fortunato was employed, the technology department, was interviewed by Don Goncalves, the Assistant Board Secretary,
6. Carmen Fortunato was advised by Mr. Goncalves that there would be no additional terminations in the IT Department. Carmen Fortunato agreed to perform any additional tasks that were required in order to fulfil his end of the year obligations.
7. On Monday, June 26, 2006, Carmen Fortunato attempted to log into his work station after arriving at work, however he was unable to log into his work station.
8. On June 26, 2006, Carmen Fortunato learned that he had been locked out of the system.
9. Carmen Fortunato learned on June 26, 2006 that he was terminated from his employment and was provided with correspondence which was undated indicating that "as a consequence of performance, attendance, credentials and/or budgetary reasons."
10. All of the reasons set forth are false and pretextual.
11. Carmen Fortunato was terminated as a result of his age and his duties were assigned to less experienced, younger employees who were paid lower salaries than Carmen Fortunato.
12. As a direct and proximate result of the actions of the defendants, Carmen Fortunato suffered damages including but not limited to manifestations of emotional distress, financial hardship, loss of salary and benefits and other compensatory damages.

COUNT ONE

13. Plaintiff, Carmen Fortunato, repeats and realleges the allegations set forth in Paragraphs 1 through 12 as if fully set forth at length herein.

14. The actions of defendant were in violation of the New Jersey Law Against Discrimination ("NJLAD") N.J.S.A. 10:5-1, et seq. as plaintiff was in a protected category as that term is defined by the NJLAD.

15. Plaintiff Carmen Fortunato was performing his functions as an employee of the Elizabeth Board of Education up to the legitimate expectations of his employer.

16. Notwithstanding plaintiff's performance, defendant terminated plaintiff's employment as a result of his age.

17. This action of the defendant violates the New Jersey Law Against Discrimination ("NJLAD") N.J.S.A. 10:5-1, et seq..

18. As a direct and proximate result of defendant's actions, plaintiff has been damaged.

WHEREFORE, Plaintiff, Carmen Fortunato, demands judgment against Defendant for compensatory damages, punitive damages, attorneys' fees, interest, costs and such other and further relief as this court deems equitable and just.

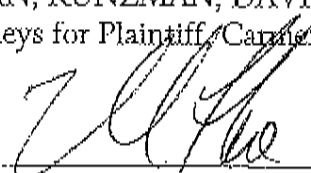
JURY DEMAND

Plaintiff hereby demands a Trial by Jury on all issues.

DESIGNATION OF TRIAL COUNSEL

Plaintiff hereby designates Richard P. Flaum as his trial counsel in this matter.

DiFRANCESCO, BATEMAN, COLEY,
YOSPIN, KUNZMAN, DAVIS & LEHRER, P.C.
Attorneys for Plaintiff, Carmen Fortunato

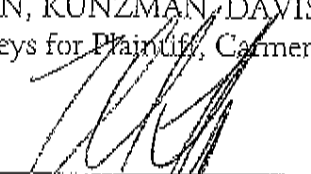
By: 
Richard P. Flaum, Esq.

Dated: July 17, 2007

CERTIFICATION IN ACCORDANCE WITH R. 4:5-1

Pursuant to Rule 4:5-1, the undersigned hereby certifies that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated, and the undersigned is unaware of any other party who is potentially responsible to any party on the basis of the facts set forth herein and who should be joined in this action pursuant to Rules 4:28 and 4:29-1, et seq.

DiFRANCESCO, BATEMAN, COLEY,
YOSPIN, KUNZMAN, DAVIS & LEHRER, P.C.
Attorneys for Plaintiff, Carmen Fortunato

By: 
Richard P. Flaum, Esq.

Dated: July 17, 2007

**DIFRANCESCO, BATEMAN, COLEY,
 YOSPIN, KUNZMAN, DAVIS & LEHRER, PC**
 15 Mountain Boulevard
 Warren, NJ 07059
 (908) 757-7800
 Attorneys For Plaintiff

CARMEN FORTUNATO	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: UNION COUNTY
Plaintiff	:	DOCKET NO. L-2500-07
	:	
-vs-	:	<u>CIVIL ACTION</u>
	:	
ELIZABETH BOARD OF EDUCATION	:	SETTLEMENT AGREEMENT
	:	
Defendants	:	
	:	
	:	
	:	

Plaintiff, Carmen Fortunato, and Defendant, Elizabeth Board of Education, in the above entitled action having agreed to amicably resolve their differences, it is hereby stipulated and agreed that this matter shall be settled upon the following terms:

1. Defendant, Elizabeth Board of Education, hereby agrees to pay, and Plaintiff, Carmen Fortunato, agrees to accept, the sum of \$205,000.00 in settlement and waiver of all of his claims against all Defendants. Such payment shall be in full satisfaction and settlement and waiver of all of his claims contained in the Complaint filed in this action and any other claims or demands which Plaintiff now has or may have against the Defendants **other than the currently pending union grievance with respect to issues of notice of termination of employment**; and in recognition of and consideration for Plaintiff's promise to dismiss with prejudice all of his claims contained in said Complaint, and to provide the Defendants with a Release of all claims against them.

ORG # DR-2007-040 Ken Smay

2. It is understood and agreed that the payment of the sum of \$205,000.00 constitutes the entire proceeds of this settlement, and shall be paid as follows: Out of the \$215,453.89 paid by the Board into the DiFrancesco Bateman trust account, \$10,453.89 will be returned to the Board in accordance with the settlement simultaneous with the forwarding of the agreement. The balance of \$205,000.00 will be apportioned pursuant to the Retainer Agreement between the DiFrancesco Bateman law firm and Carmen Fortunato. These payments will cover all claims. Those claims include, without limitation, claims for lost wages, physical stress, pain and suffering, and physical manifestations of emotional stress, distress, and/or trauma, humiliation, dislocation and deprivation, and other irreparable harm resulting from the strain of this controversy; and anxiety caused by lack of information, uncertainty and resultant planning difficulty; career disruption; adjustment problems; damage to career and personal life, including medical expenses and attorneys fees.

3. The consideration described in Paragraphs 1 and 2 above shall constitute the entire monetary settlement of the matters encompassed by this Agreement.

4. In exchange for the promises and undertakings of the Defendant, Elizabeth Board of Education, as set forth in Paragraphs 1, 2, and 3 above, Plaintiff agrees:

- A. To execute a General Release and Waiver ("General Release") to the Defendants in the form annexed. Plaintiff expressly acknowledges that this Agreement and the General Release and Waiver are intended to extinguish and to waive all claims which she may have against any person or entity identified as a releasee in the General Release and Waiver resulting from anything which has happened up to the date of the execution of the General Release and Waiver and which were or could have been asserted,

including those claims unknown to him and claims for medical expenses, attorneys fees and costs, **except for claims related to the ongoing grievance proceedings with regard to the notice provision for termination.** *Order # AR-2007-040 Kevin Murray* Plaintiff hereby acknowledges that the execution of this Agreement and the General Release and Waiver which accompanies it shall absolutely bar any such claim, action or suit against any releasee identified in the General Release and Waiver, except as otherwise provided herein.

- B. Plaintiff agrees and promises to cause his attorney to file a Stipulation of Dismissal with Prejudice with respect to his claims and causes of action with the Superior Court of New Jersey in this action.

6. The parties agree that any breach of any obligation under this Agreement including will constitute a breach of this Agreement. In the event of a breach of this Agreement by one of the parties hereto, the breaching party shall pay a penalty to the non-breaching party to be established in the discretion of the Court for a willful violation of any term of this Agreement. In the event that either party is required to commence an action in law or equity to enforce its rights under this Agreement and it prevails, the party against whom the action is brought shall be required to pay the prevailing party reasonable attorneys fees and costs for any damages which may be recoverable.

7. It is understood that neither the execution of this Agreement nor any other action taken by the Defendants in connection with this settlement constitutes an admission by the Defendants or any other person or entity identified in the General Release and Waiver as a releasee, of any violation of any law, duty or obligation, or that any decision or action with

respect to the employment of Plaintiff was unwarranted, unjustified, retaliatory, discriminatory or otherwise unlawful. The Defendants specifically disclaim any liability to Plaintiff or any other person. The parties have entered into this Agreement solely to compromise disputed claims. No findings of any kind have been made or issued by the Court on the merits of the claims in this action and neither party purports to be the prevailing party in this action.

8. All parties to this Agreement and their counsel participated in the negotiation and drafting of this Agreement as equals. No particular party shall be deemed to be the drafter or provider of this Agreement, and the parties agree that the Agreement shall not be construed against any particular party.

9. This Agreement and the General Release and Waiver referred to herein set forth the entire agreement between Plaintiff and the Defendants. This Agreement supersedes all prior agreements or understandings, if any, between the parties regarding the subject matter of this Agreement.

10. Plaintiff acknowledges that he has consulted with his attorney regarding this Agreement and the General Release and Waiver that accompanies it prior to executing it; that the terms of this Agreement and the General Release and Waiver have been explained to him by his attorney; and that he has represented to his attorney that he has read this Agreement and the General Release and Waiver and fully understands them and agrees to be bound by them. Plaintiff has also acknowledged that he has been given a reasonable period of time within which to consider this settlement and the terms of this Agreement and General Release and Waiver prior to executing them.

11. Plaintiff acknowledges that as a result of executing this Agreement and the General Release that accompanies it, he is releasing all Claims against the releasees under the Age Discrimination in Employment Act ("ADEA") and the Older Workers Benefit Protection

Act ("OWBPA"). As such, Plaintiff acknowledges that:

- a. He has been advised to consult with an attorney of his choosing concerning the legal significance of this Agreement and General Release, and he has done so;
- b. He has read and fully understands the terms and conditions of this Agreement and the General Release;
- c. The consideration - - the money being paid to him - - is a benefit that he is not otherwise entitled to receive. The amount of money being paid to him is sufficient and adequate to support his promises, covenants and release as set forth in this Agreement and General Release;
- d. He has been offered twenty one (21) days to consider this Agreement and General Release before executing this Agreement and General Release and has been advised by his attorneys that any changes to this Agreement that may be agreed upon by the parties after he has received this Agreement and General Release, whether material or immaterial, do not restart this period for consideration; and
- e. He has been advised that during the seven (7) day period following his execution of this Agreement and General Release, he may revoke her acceptance of this Agreement and General Release by delivering a written notice to the attorneys for the Defendant (as identified below) and advising the attorneys that he wants to revoke her acceptance:

Attorneys for Defendants: Robert A. Ungvary, Esq.
1207 E. Grand Street
Elizabeth, NJ 07204

- f. He has been advised that this Agreement and General Release shall not become effective or enforceable until after the seven (7) day revocation period has expired.

12. Any notice or other communication under this Settlement Agreement shall be in writing and shall be considered given when mailed by regular mail or delivered personally, to the parties at the following addresses:

To Plaintiff:

Thomas R. Basta, Esq.
DiFrancesco, Bateman, Coley,
Yospin, Kunzman, Davis & Lehrer
15 Mountain Boulevard
Warren, New Jersey 07059

To Defendants:

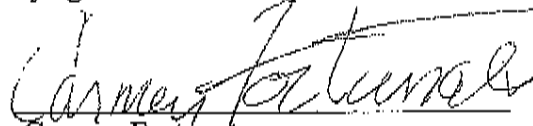
Robert A. Ungvary., Esq.
1207 E. Grand Street
Elizabeth, NJ 07204

or at such other address as a party may specify by notice to the other.

13. Nothing contained herein or in the Release shall be intended to bar either party from initiating such action as may be necessary to enforce the terms of this Settlement Agreement.

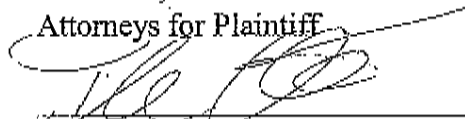
The foregoing terms and provisions are hereby agreed to and accepted:

Dated: 1/26/2011


Carmen Fortunato

DiFrancesco, Bateman, Coley, Yospin
Kunzman, Davis & Lehrer
Attorneys for Plaintiff

Dated: 1/26/2011


Thomas R. Basta, Esq.

Attorneys for Defendants

Dated: _____

Robert A. Ungvary, Esq.

GENERAL RELEASE AND WAIVER

In consideration for the promises and undertakings described in the Settlement Agreement dated January 26, 2010, I hereby release, waive and discharge Elizabeth Board of Education and all affiliated and related entities and its present and former board members, officers, employees and representatives, and their estates and/or heirs thereof from any and all claims which I, my estate and/or heirs may have against any of them. This releases and waives all claims, known and unknown, resulting from anything which has happened up to now including claims for attorneys' fees.

Without limiting the scope of the foregoing provision in any way, I specifically release all claims which were or could have been asserted by me in the action entitled Fortunato v. Elizabeth Board of Education, filed in the Superior Court of New Jersey, Law Division, Union County, bearing Docket No. L-2500-07. I also release and waive all claims relating to or arising out of any aspect of my employment with Elizabeth Board of Education, including but not limited to, all claims under Title VII of The Civil Rights Act, The Civil Rights Act of 1991 and the laws amended thereby; Sections 1981 through 1988 of Title 42 of the United States Code; the Employee Retirement Income Security Act of 1974; the Immigration Reform Control Act; the Fair Labor Standards Act; the Occupational Safety and Health Act; the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act of 1990, the Americans with Disabilities Act; the Family and Medical Leave Act of 1993; the New Jersey Family Leave Act; the New Jersey Law Against Discrimination; the New Jersey Conscientious Employee Protection Act; the New Jersey Wage and Hour Act, and any related federal, state or local

law claims, and any claims of discrimination based on race, age, sex, religion, color, creed, handicap or disability, citizenship, national origin and any other factor prohibited by any federal, state or local law, rule, regulation or guideline; any claim for wrongful discharge; any contract of employment, express or implied; any provision of the Constitution of the United States or the State of New Jersey; and any other law, common or statutory, of the United States, the State of New Jersey or any other state; any claims for the negligent and/or intentional infliction of emotional distress or specific intent to harm; any claims for attorneys' fees, costs and/or expenses; any claims for unpaid or withheld wages, severance pay, benefits, bonuses, deferred compensation, stock option awards, restricted stock awards, commissions and/or other compensation of any kind; and/or any other federal, state or local human rights, civil rights, wage and hour, wage payment, pension or labor laws, rules and/or regulations, and all claims growing out of any legal restrictions on the Elizabeth Board of Education's right to hire and/or terminate its employees, including all claims that were asserted and/or that could have been asserted by the me in this cause of action. **This release explicitly and specifically exempts the pending issue with respect to the union grievance filed alleging a breach of a notice period in connection with plaintiff's termination.** I also promise not to sue and I waive all claims against Elizabeth Board of Education, its subsidiaries, or any related and/or affiliated entities, based upon any claims covered by the Settlement Agreement, this General Release and Waiver. I also waive all of my rights for discovery of anything that happened from the beginning of time until now between me and the Elizabeth Board of Education.

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Notwithstanding the foregoing, I specifically do not waive or release any rights I may have pursuant to the New Jersey Workers' Compensation statutes for temporary or permanent disability benefits. I do, however, waive and release any and all claims in Superior Court that I have or may have against the Elizabeth Board of Education for violating the retaliation provisions of the New Jersey Compensation Statutes, N.J.S.A. 34:15-39.1 and N.J.S.A. 43:15-39.2.

I acknowledge that I was advised to consult with attorneys and have, in fact, consulted with my attorney, Thomas R. Basta, Esq. regarding this General Release and Waiver; that the terms of this General Release and Waiver have been explained to me by my attorney; and that I have represented to my attorney that I have read this General Release and Waiver and fully understands it and agree to be bound by it. I also acknowledge that I have been given a reasonable period of time within which to consider this settlement and the terms of this General Release and Waiver prior to executing it.

ACKNOWLEDGMENT

I HAVE CAREFULLY READ AND FULLY UNDERSTAND THE TERMS AND CONDITIONS OF THIS RELEASE AND WAIVER. I ACKNOWLEDGE THAT I HAD THE OPPORTUNITY TO REVIEW THIS RELEASE AND WAIVER WITH MY ATTORNEY, THOMAS R. BASTA, ESQ., AND/OR ANYONE ELSE OF MY CHOOSING, AND TO DISCUSS WITH SUCH PERSONS THE TERMS AND CONDITIONS OF THIS RELEASE AND WAIVER AND MY RIGHTS UPON EXECUTION. I AGREE AND ACKNOWLEDGE THAT NO REPRESENTATIONS CONCERNING THE TERMS OR EFFECT OF THIS RELEASE WERE MADE BY

