

April 2017

An ALM Publication

NEW JERSEY

FEATURED VERDICT

UNION COUNTY

EMPLOYMENT

Retaliation — Workplace Harassment — Hostile Work Environment

Fire-fighter: Harassment, racial discrimination led to retirement

VERDICT \$2,075,000**CASE** Fred Bonda v. Elizabeth Fire Department, City of Elizabeth, J. Christian Bollwage, Thomas McNamara, Edward Sisk, Onofrio Vitullo, and Mark Chai
No. UNNL1979-13**COURT** Union County Superior Court**JUDGE** Thomas J. Walsh**DATE** 3/27/2017**PLAINTIFF****ATTORNEY(S)** Paula M. Dillon, Krumholz Dillon, P.A., Jersey City, NJ
Alan L. Krumholz, Krumholz Dillon, P.A., Jersey City, NJ**DEFENSE****ATTORNEY(S)** Raymond S. Londa, Londa & Londa, Esqs., Elizabeth, NJ (Thomas McNamara)
Robert F. Varady, La Corte, Bundy, Varady & Kinsella, Attorneys At Law, Union, NJ (Elizabeth Fire Department, City of Elizabeth, Edward Sisk, J. Christian Bollwage, Mark Chai, Onofrio Vitullo)**PLAINTIFF****EXPERT(S)** Kristin K. Kucsma, M.A., economics, Livingston, NJ

Sheryl A. Thailer, Ph.D., psychology/counseling, Ridgewood, NJ (treating)

**Kristin Kucsma**
Chief Economist
Sobel Tinari Economics Group**DEFENSE****EXPERT(S)** None reported**FACTS & ALLEGATIONS** In February 2014, plaintiff Fred Bonda, a fire inspector in his late 50s, retired from the Elizabeth Fire Department, in Elizabeth. He had worked for the department since 1995. He claimed that his retirement was premature and due to harassment and retaliation that he allegedly experienced since June 1, 2012.

Bonda alleged that there were instances in which he had cited violations of the fire-safety code during his inspections of residences, apartment buildings, hospitals, businesses, and restaurants; however, the violations would be later abated by the department. Bonda claimed that someone in the department would access its computer system and make the abatement. Abatements were allegedly made to businesses whose owners knew individuals associated with the Elizabeth Fire Department.

Bonda claimed that when he questioned his superiors about the abatements, he was told to turn a blind eye. When he pressed further, he suffered retaliation and racial discrimination (Bonda is Portuguese). In one instance, he said, a department official called him a “piece of sh-t sp-c.” The alleged retaliation resulted

in Bonda being passed over for a promotion to a fire official. Bonda claimed that he was not interviewed for the fire-official position, and the position's appointment was made after Bonda filed a complaint with the city regarding the department's alleged violations of fire-safety codes and regulations.

According to Bonda, he was subject to house arrest by the department on two occasions (in 2012 and 2013), he was denied overtime opportunities, and he was removed from the city's honor guard. Bonda claimed his multiple complaints of harassment and discrimination were not investigated. He further claimed that there were occasions when the department wanted him to sign a fraudulent roll call (which he refused to do) for the son of a deputy fire chief.

Bonda sued the department, the City of Elizabeth, the Elizabeth Fire Dept., the mayor (J. Christian Bollwage), Fire Chief Thomas McNamara, and others, alleging retaliation, harassment, racial discrimination, and violations under the Conscientious Employee Protection Act (Bollwage and the other department officials were dismissed, prior to trial).

At trial, Bonda testified about the department's alleged wrongdoing.

The fire department and McNamara denied all allegations. They said abatements were done from Bonda's inspections, which cleared any code violations. McNamara, said Bonda was not promoted for legitimate, non-retaliatory reasons.

INJURIES/DAMAGES *emotional distress*

Bonda alleged that the department and McNamara's actions caused him to suffer emotional distress, resulting in counseling with a psychologist. He continued to treat with the psychologist at the time of trial.

Bonda's psychologist causally related his emotional distress and treatment to workplace harassment and a hostile environment. The psychologist opined that Bonda's mental state would not likely improve further. Bonda sought damages for past and future pain and suffering.

Bonda, who was self-employed at the time of trial, sought about \$300,000 to \$1 million in past and future lost earnings, based on pension benefits, stipend money, gross income, and retirement age.

RESULT The jury found that Bonda was asked to engage in violations of the law, that he blew the whistle regarding the activity, that McNamara and others in the department retaliated against him, and that there was a causal connection between the retaliation and Bonda's protected activity. He was determined to receive \$1,075,000. Under the Conscientious Employee Protection Act, Bonda was determined to receive punitive damages. In a separate phase of trial (McNamara had been dismissed following the verdict for compensatory damages), the jury determined \$1 million in punitive damages against the City of Elizabeth Fire Department. Bonda was determined to receive a total amount of \$2,075,000.

FRED BONDA \$1,000,000 punitive damages
\$750,000 lost wages
\$325,000 emotional distress
\$2,075,000

TRIAL DETAILS Trial Length: 2 weeks
Jury Composition: 2 male, 6 female

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. Counsel for Thomas McNamara declined to contribute. Counsel for Elizabeth Fire Department, City of Elizabeth, J. Christian Bollwage, Edward Sisk, Onofrio Vitullo, and Mark Chai did not respond to the reporter's phone calls.

—Aaron Jenkins

