

Catering hall's manager claimed HIV disclosure led to firing

Verdict: (P) \$1,350,000.00

Case Type: Disability Discrimination, Employment - Wrongful Termination

Case Name: Anthony Baffo v. New York Institute of Technology; Robert Rizzuto, in his official and individual capacities; and Leonard Aubrey, in his official and individual capacities, No. CV 10- 1245

Venue: U.S. District Court, Eastern District, NY

Judge: Leonard Wexler

Date: 06-12-2012

Plaintiff(s):

Attorney(s):

- Douglas H. Wigdor; Thompson Wigdor LLP; New York, NY, for Anthony Baffo

Defendant(s):

Attorney(s):

- Douglas P. Catalano; Fulbright & Jaworski, L.L.P.; New York, NY, for New York Institute of Technology, Robert Rizzuto, Leonard Aubrey

Facts:

On Oct. 26, 2009, plaintiff Anthony Baffo, 39, the general manager of the New York Institute of Technology's de Seversky Mansion catering hall, learned that his employment had been terminated. Baffo's termination occurred 24 days after he had told a supervisor, Robert Rizzuto, that he had contracted the human immunodeficiency virus. Baffo claimed that his termination was a discriminatory response to that disclosure.

Baffo sued Rizzuto; the executive who approved Baffo's termination, Leonard Aubrey; and the New York Institute of Technology. Baffo alleged that his termination was discriminatory and a violation of the Americans with Disabilities Act.

Baffo claimed that he had a record of good performance and that the catering hall was profitable during his employment. Three co-workers agreed, and one claimed that she had been mistreated in response to a request for vacation time. Baffo also claimed that, while he was on vacation during the weeks of Oct. 5 and Oct. 12, the defendants installed hand-sanitizing equipment throughout the catering hall. He contended that the sanitizers were a response to his disclosure and that they were a constant reminder of his disability.

Defense counsel contended that Baffo's termination was based on performance issues and that it had been decided prior to Oct. 3. In an affidavit, Rizzuto contended that the hall had lost some \$600,000 during Baffo's time as general manager. Two of the hall's other managers agreed that Baffo had performance problems.

Aubrey contended that he did not learn of Baffo's HIV-positive status until Oct. 23, 2009. However, Baffo's counsel contended that, during a deposition, Aubrey claimed that he could not recall how he had learned of Baffo's HIV-positive status.

Injury:

Baffo was terminated on Oct. 26, 2009. After several months had passed, he procured employment as a restaurant's assistant manager. However, he earns significantly less money than he did at the catering hall, and he contended that his responsibilities are less meaningful. He claimed that he suffers residual anxiety, depression and sleeplessness.

Baffo sought recovery of about \$30,000 for each year of reduced earning capacity, unspecified damages for his past and future pain and suffering, and punitive damages.

Defense counsel contended that Baffo's ongoing emotional suffering is a result of his HIV-positive status and treatment.

Verdict Information:

The jury found that Baffo was subjected to discrimination based on his HIV-positive status. It determined that his damages totaled \$1.35 million, though the award did not include a component for lost earnings, which will be determined by Judge Leonard Wexler.

Anthony Baffo

\$1,250,000 Personal Injury: Punitive Exemplary Damages

\$100,000 Personal Injury: compensatory damages

Editor's Comments:

This report is based on court documents and information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.