



HIV-Positive Worker Awarded \$1M In ADA Suit Against NYIT

By Ben James

Law360, New York (June 13, 2012, 3:00 PM ET) -- A New York federal jury has ruled that a former New York Institute of Technology employee who filed an Americans With Disabilities Act lawsuit claiming the school terminated him because he had HIV should get \$1.35 million in damages, an attorney for the plaintiff said Wednesday.

The jury decided Tuesday that Anthony Baffo, who worked as general manager of NYIT's de Seversky Conference Center on Long Island, should get \$100,000 in compensatory damages and \$1.25 million in punitive damages, although the punitive award will be reduced to \$300,000 to conform to the ADA's damages cap, according to [Thompson Wigdor LLP's Douglas Wigdor](#), who represents Baffo.

"We are extremely happy with the decision by the jury and the message that has been sent to other employers who take adverse actions against employees who are disabled," Wigdor said.

Baffo sued NYIT in March 2010, accusing the university and two individuals of violating the ADA, the New York State Human Rights Law and the New York City Human Rights Law. Baffo excelled as an NYIT employee, so it was obvious when he was terminated in October 2009 — just three weeks after telling his supervisor about his HIV status — that the decision to get rid of him was discriminatory, he asserted.

Baffo learned that he had HIV on Oct. 1, 2009, when he found out that blood he had donated two weeks prior had tested positive for the virus, according to the complaint. He told his supervisor and longtime friend Robert Rizzuto about the revelation before going on a previously scheduled 10-day vacation, the suit said.

When Baffo returned, Rizzuto avoided dealing with him directly and used email almost exclusively to communicate with him, Baffo alleged, adding that hand sanitizers — a "constant reminder" of Baffo's disability — had been installed in his absence.

On Oct. 26, 2009, Baffo was told that his position was being eliminated due to economic uncertainty following a prior reorganization, but that explanation was really a pretext for ending his employment due to having HIV, he claimed.

The defendants also tried to backdate the termination decision to make it look like it was made Oct. 16, 2009, which was before the date when they conceded knowledge of Baffo's HIV status, the complaint contended.

NYIT said that Baffo was terminated as part of a reorganization that started in August 2009, well before anyone including Baffo knew that he was HIV positive. The school also said that Baffo progressed from being a satisfactory employee to one whose job performance was lacking.

Punitive damages are capped under the ADA, and are not recoverable under the New York State Human Rights Law. The court dismissed the claim under the New York City Human Rights Law — which has no caps — but Baffo will appeal that dismissal, Wigdor said.

The jury found no liability against Rizzuto, and the other individual defendant — Leonard Aubrey, NYIT's chief financial officer — was dismissed, the lawyer added.

"NYIT maintains that this case has no merit and we are disappointed in the jury's decision. We are considering our options and have no further comment at this time," NYIT spokeswoman Libby Sullivan said.

The defendants are represented by Douglas Catalano and Neil Sparber of Fulbright & Jaworski LLP.

Baffo is represented by Douglas Wigdor and Michael Willemin of Thompson Wigdor LLP.

The case is Baffo v. New York Institute of Technology et al., case number 2:10-cv-01245, in the U.S. District Court for the Eastern District of New York.