

*Disabilities***Federal Jury Awards \$1.35 Million To Worker Fired After HIV Test Result**

By John Herzfeld

NEW YORK—A federal jury has awarded \$1.35 million in damages to a former New York Institute of Technology employee who was fired after learning that his blood had tested positive for HIV (*Baffo v. N.Y. Inst. of Tech.*, E.D.N.Y., No. 10-cv-01245, *jury verdict* 6/12/12).

The jury in U.S. District Court for the Eastern District of New York, in a June 12 verdict after deliberations of less than a day, awarded plaintiff Anthony Baffo compensatory damages of \$100,000 and punitive damages of \$1.25 million. Judge Leonard D. Wexler presided over the trial, which began June 5.

The punitive award will be cut to meet the Americans with Disabilities Act cap of \$300,000, but economic damages and attorneys' fees have yet to be determined by the court, Baffo's attorney, Douglas H. Wigdor of Thompson Wigdor in New York, said in an interview.

Baffo is seeking \$300,000 to \$400,000 in economic damages and approximately \$600,000 in fees, he said.

Also, Baffo will appeal the judge's dismissal of his claims under the New York City Human Rights Law, which has no cap on punitive damages, Wigdor said.

The claims under the city law were dismissed because Baffo worked at NYIT's Old Westbury, N.Y., campus on Long Island, but Baffo lives in New York City and the university derives 20 percent to 30 percent of its revenue from its New York City campus, he told BNA.

The jury found no liability against Baffo's supervisor, and claims against the university's chief financial officer had been dismissed, Wigdor said.

In a March 2010 complaint, Baffo said he was terminated from his job as general manager of the university's de Seversky Conference Center in October 2009 just three weeks after he had notified his supervisor of his HIV status.

He told the supervisor, a friend for almost 20 years, the day after he himself had learned that blood he had donated had tested positive for HIV, the complaint said.

**Hand Sanitizers Seen as Reminder**

After he returned from a scheduled 10-day vacation, Baffo found that the supervisor was avoiding direct contact with him and communicated almost exclusively by email, and that hand sanitizers had been installed throughout the center, "which served as a constant reminder to plaintiff of his disability," the complaint said.

Baffo was terminated at a meeting in which the supervisor gave an "unsupported explanation" that he was eliminating the general manager position due to economic uncertainty following an earlier reorganization, the complaint said. But the center's revenue and profits contradicted the explanation, the complaint said, calling it a pretext.

In a statement on the verdict, Wigdor said: "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."

NYIT, in a statement, said it maintains that the case has no merit and expressed disappointment with the verdict.

"We are considering our legal options and have no further comment at this time," the university said.

The jury found no liability against the supervisor and claims against the university's chief financial officer had been dismissed, Wigdor said.