

2014 WL 3945232 (Fla.Cir.Ct.) (Trial Pleading)
Circuit Court of Florida.
Fifteenth Circuit
Palm Beach County

Mary JONES, Plaintiff,

v.

AREA AGENCY ON AGING PALM BEACH COUNTY/ TREASURE
COAST, INC., a Florida not for profit corporation, Defendant.

No. 2014CA009500.
August 1, 2014.

Division: AA

Complaint

[Mary Jones](#).

Plaintiff, MARY JONES, sues Defendant, AREA AGENCY ON AGING PALM BEACH COUNTY/TREASURE COAST, INC. (hereinafter "Defendant"), and alleges:

1. Plaintiff sues Defendant for violations of her rights under the Florida's Private and Public Sector Whistleblower Act, §§448.01 et seq., and 112.3187, Fla. Stat., et seq. ("Whistleblower Acts"). The claims arise from Defendant's retaliation against Plaintiff for Plaintiff engaging in protected activities, to wit, participating in an investigation of the Defendant conducted by the Inspector General of the State of Florida Department of **Elder** Affairs, and truthfully disclosing during said investigation that she reasonably believed that grant funds received from federal and State agencies were being fraudulently misspent by the Defendant in violation of grant conditions.

JURISDICTION AND VENUE

2. Jurisdiction in this Court is proper as this is an action for damages and equitable relief. The amount sought by Plaintiff, not including interest and costs, exceeds \$25,000.

3. Venue is appropriate in Palm Beach County. All acts complained of occurred in Palm Beach County, Florida and Defendant's principal place of business is in West Palm Beach, Florida, within Palm Beach County.

PARTIES

4. Plaintiff is a natural person residing in Palm Beach County. Plaintiff was employed by Defendant as the Director of the **Elder** Rights Center, and served in that and other capacities for a period of more than 12 years, beginning on or about November, 2001 until she was terminated from her employment on or about February 11, 2014.

5. At all times material, Defendant was Plaintiff's "employer" as that term is defined by the Whistleblower Acts in that it employed 10 or more persons, including the Plaintiff.

6. At all times material, Defendant was conducting business in Palm Beach County, Florida.

FACTUAL ALLEGATIONS

7. Defendant is a federally mandated organization that is organized as a Florida not for profit 501(c)(3) corporation. Defendant receives public funding from the Florida Office of the Attorney General, the Florida Department of **Elder** Affairs and the United States Department of Justice in the form of grants designed to provide services for clients as defined by the grants. Said funding is provided to the Defendant under the Florida Victims of Crime Act, the "**Elder Abuse**" grant and the "Office of Violence Against Women" of the D.O.J.

8. At all times material hereto, Plaintiff was fully qualified for the position she held with Defendant, and performed her work in an above satisfactory manner.

9. Plaintiff engaged in protected activity when she provided information, orally and in writing, on or about March 10, 2009, to Stanley J. Behmke, then Inspector General, Florida Department of **Elder** Affairs, and objected to how grant funds were being misspent on administrative costs and not according to grant conditions, and that financial information was being withheld from her by management and the fiscal staff, which she needed in order to ensure that the funds were in fact being spent in accordance with grant conditions and the law upon which those grants were appropriated to the Defendant.

10. Plaintiff participated in the investigation by the I.G.'s office as a result of a complaint believed to be made by a former employee of the Defendant who had disclosed to the I.G.'s office that the Plaintiff had complained that "the Agency was misappropriating grant funds in order to pay for exorbitant expenditures that were encumbered when the Agency entered into the lease for its new head quarters building."

11. Plaintiff truthfully reported to the I.G., verbally and in writing, that grant funds earmarked for client services were being misspent on building expenses, violating federal and state laws. This unlawful spending constituted a specific danger to the public's health, safety and welfare.

12. After her participation in the investigation, Plaintiff was criticized by her supervisor Jaime Estremera-Fitzgerald, Chief Executive Officer, in her written evaluation of November 15, 2009, immediately following her report to the I.G.'s Office, for: divulging "private and privileged information to those without a need to know...[which] behavior is not within the value parameters of our Agency." Plaintiff was also criticized in said evaluation for "a history of distrusting the manner in which the fiscal staff adheres to the strict accounting mandates of our grantors as well as the federal government and the DoEA" [Department of **Elderly** Affairs]. Defendant's CEO criticized Plaintiff in this evaluation for the verbal and written complaints she made to the I.G. of the Department of **Elderly** Affairs during the course of the I.G. investigation of the Defendant.

13. Plaintiff was intimidated and chilled in the exercise of her rights to report violations of the law as a result of this not so subtle warning from the CEO in her evaluation, but continued to perform her work ably. On or about February 11, 2014, Plaintiff was terminated without cause, and without any prior disciplinary action; the CEO Mr. Estremera-Fitzgerald said that God told him to involuntarily terminate her. Mr. Estremera-Fitzgerald subsequently told others that she had resigned voluntarily. Because the Defendant is a not for profit corporation, under federal law it is required to publish and adhere to a Personnel Policy Manual. To that end it has published a policy called "607 Progressive Discipline" which provides for five (5) steps to correct poorly performing employees: a verbal warning, a written warning, probation, suspension without pay, or termination from employment. Plaintiff was never warned that her performance was deficient, needed to improve nor was she given any opportunity to correct any alleged (or in this case, non-alleged deficiencies) and was in fact given no reason for her termination, other than a divine message that Mr. Estremera-Fitzgerald claimed to have received from God, apparently with non explanation.

14. Plaintiff's participation in the I.G.'s investigation and written objections to the Defendant's misappropriation of grant funds are protected activities within the meaning and intent of the Whistleblower Acts.

15. As a result of Defendant's actions in re, Plaintiff has been damaged, including losing pay, benefits, mental anguish, and loss of standing and reputation in the community.

COUNT I/WHISTLEBLOWER ACT

16. Plaintiff realleges and asserts, as if fully set forth in Count I, the allegations ¶¶1 -15, *supra*.

17. Plaintiff engaged in protected activity when she disclosed information in a written and signed document to the I.G.'s Office during the course of the I.G. 's investigation of the Plaintiff. Plaintiff's signed document is attached hereto and incorporated herein as **Exhibit 1**.

18. After Plaintiff engaged in protected activity, Defendant, undertook adverse action against her, including, but not limited to, terminating her employment.

19. Plaintiff's protected activity and the adverse employment action taken against her are not wholly unrelated.

20. Defendant's reason for terminating Plaintiff, that the CEO received a communication from God to involuntarily terminate her, is a pretext for retaliation, since it is highly improbable that God would become involved in the termination of an employee who had served loyally for more than 12 years and had honestly reported unlawful conduct on the part of the Defendant during an I.G. investigation.

21. As set forth more fully above, Defendant's retaliatory conduct violated Florida's Public Sector Whistleblower Act, § 112.3187, Fla. Stat., and Private Sector Whistleblower Act, §448.101 et seq.

WHEREFORE, Plaintiff respectfully requests that this Court, in accordance with §112.3187(9) and/or §448.103, Fla. Stat.:

- A. Award Plaintiff lost wages, benefits, and other economic damages, as appropriate;
- B. Reinstatement by a preliminary and permanent injunction or, in lieu thereof, front pay;
- C. Award Plaintiff compensatory damages.
- D. Award Plaintiff a reasonable attorneys' fees and her costs; and,
- E. Any other relief deemed just and proper, including permitting future amendment to claim punitive damages for the Defendant's wilful and intentional retaliation against her.

I DECLARE UNDER PENALTY OF PERJURY, that the foregoing is true and correct to the best of my knowledge and belief.

JURY DEMAND

PLAINTIFF DEMANDS JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted,

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COUNSEL FOR PLAINTIFF

Dated: *September 1, 2014*

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