

2014 WL 7174805 (Mass.Super.) (Trial Pleading)
Superior Court of Massachusetts.
Suffolk County

Lisa SHAVER, Plaintiff,
v.
Belmont MANOR, Defendant.

No. 14-2481-F.
August 5, 2014.

Complaint

David A. Pearlman, Esq. (BBO # 671550), Pearlman Legal Enterprises, One Boston Place, Suite 2600, Boston, MA 02108, david@pearlmanlegal.com, 617-894-6893

INTRODUCTION

Plaintiff Lisa Shaver, by her attorney David Pearlman, brings this action seeking redress for violations of the Massachusetts discrimination law on disability, M.G.L. c. 151B, §4, the Massachusetts Protection from Retaliatory Action by Health Care Facilities Act, M.G.L. c. 149, § 187(b)(4), and the Reports of Abuse of Patients Act, M.G.L. c. 111, § 72G. Ms. Shaver was terminated by defendant Belmont Manor under pretext, on the mixed motives of (1) removing handicapped personnel restricted to light duty and (2) retaliating against a conscientious employee who brought negative attention to the defendant and at least one of its employees by reporting elder abuse, as required by state law.

JURISDICTION AND VENUE

The Superior Court department holds original jurisdiction for civil actions seeking calculable monetary damages in excess of \$25,000. Plaintiff Lisa Shaver resides in Boston, MA, Suffolk County, satisfying the geographic requirements for proper venue.

FACTUAL BACKGROUND

1. The plaintiff, Lisa Shaver (hereinafter referred to as “Ms. Shaver”) was a gainfully employed Activities Assistant at Belmont Manor, a health care nursing facility in Belmont, MA. Her usual place of residence is 466 Commonwealth Avenue, #303A, Boston, MA 02215.
2. The defendant, Belmont Manor, is a health facility that provides nursing, rehabilitation, and assisted living care to patients. Its owner and administrator is Stewart Karger. The defendant's usual place of business is 34 Agassiz Avenue, Belmont, MA 02478.
3. Ms. Shaver is afflicted by osteoarthritis and a related knee injury, a sometimes debilitating handicap that meets the statutory threshold for protected class status under M.G.L.c. 151B, §1(17): “The term handicap means (a) a physical or mental impairment which substantially limits one or more major life activities of a person; (b) a record of having such impairment; or (c) being regarded as having such impairment...”
4. The defendant hired Ms. Shaver to work at Belmont Manor as an Activities Assistant in January of 2012. The plaintiff worked for the defendant from January 12, 2012 until September 10th, 2013. The terms of their agreement stipulated an initial hourly pay of \$14.50 per hour.

5. Ms. Shaver consistently received positive work performance reviews, resulting in two salary increases, the first on March 14, 2012, and the second on December 17, 2012.

6. On March 30th, 2013, Ms. Shaver reported to authorities, in compliance with state law, an incident of **elder abuse** that she had witnessed being perpetrated by Certified Nurse Assistant Marie Nazaire. The Belmont Police Department and Department of Public Health conducted an investigation into the matter, engendering significant resentment and hostility toward Ms. Shaver. A friend of the Nurse Assistant named Sissy, who is also the co-worker of both Ms. Nazaire and Ms. Shaver, warned the plaintiff that “what goes around comes around.” Ms. Shaver reported this threat to their boss, Administrator Stewart Karger. Belmont Manor took no actions to remedy the threat of retaliation.

7. On April 26th, 2013, Ms. Shaver exacerbated her preexisting handicap of osteoarthritis when she injured her knee within the scope of employment. While diligently tending to her duties as an Assistant Activities Director, the plaintiff bent down to plug in a Nook book so that she could access trivia questions for the residents in her care. Her right knee popped, causing significant pain, discomfort, and a noticeable adverse effect on the plaintiff's gait.

8. On April 29th, 2013, the plaintiff arrived to work on crutches. Gordon Peck, the Manager of Operations, threatened to immediately terminate Ms. Shaver's employment, if he found out that the injury was unrelated to work.

9. Upon Ms. Shaver's return to work, her doctor confined her to light duty and a restriction on lifting anything in excess of 25 pounds. Supervisor Carolyn Cassetina warned Ms. Shaver that Mr. Karger does not like to accommodate disabled employees with light duty.

10. On September 2nd, 2013, the plaintiff received explicit instructions from her supervisor that day, Ms. Danielle Arana, to place her activities cart in such a way as to facilitate the assigned arrangement of the dining hall. Ms. Shaver's coworker, Marie, belligerently demanded that the plaintiff not comply with the supervisor's orders. Marie insisted that the plaintiff move her cart. Ms. Shaver opted to instead follow her supervisor's instructions. A non-employee witness, Lora Green, described Marie as “telling Lisa [the plaintiff] what to do in an awful way. Lisa was only trying to help.” A second statement by an intervening supervisor named Mr. Freeborn, explained that Ms. Shaver correctly followed orders and that Marie and the other nurses should abide by them too. He wrote: “I told the Nursing Staff to give time to sit the residents according to the activity plan.”

11. The next day, September 3, 2013, the same hospice nurse who had threatened Ms. Shaver back in March with retaliation for reporting Ms. Nazaire to the Department of Public Health, accused the plaintiff of refusing assistance with the maneuvering of a wheelchair. Without an opportunity to defend herself against the evidently grievous charge of turning down assistance with a wheelchair, Ms. Shaver was suspended for seven days without pay and subsequently terminated.

12. The plaintiff received no meaningful opportunity to contest any of the charges against her. Operations Manager Gordon Peck offered her a meeting to vent, but made clear that nothing she could say or do would alter the outcome. “You're terminated!” were his exact words. The exchange was witnessed by two supervisors, Ms. Arana and Ms. Cassetina.

13. When other Belmont Manor employees who were not disabled or retaliated against received accusations of misconduct, they would first be invited to rebut and discuss the charges before any final decision would be rendered. Ms. Shaver received no such opportunity.

14. Belmont Manor exhibits a pattern of discriminatory treatment against its disabled and handicapped staffers with resident interaction. A former co-worker of the plaintiff, Kate Wardrop, also worked in the Activities Department, terminated only a few months prior to Ms. Shaver's discharge. During the final weeks of Ms. Wardrop's tenure, Supervisor Carolyn Cassetina instructed Ms. Shaver and their other colleagues not to give Ms. Wardrop any special treatment on account of her disability, and to write anything down that could help get her fired. Between Gordon Peck's desire to immediately terminate employees upon

learning of their disabilities, Stewart Karger's disdain for accommodating disabled employees with lighter duty, and Carolyn Cassetina's instructions to actively find fault in the work of handicapped employees for purposes of securing their termination, it is clear that the defendant improperly takes handicap into strong consideration when rendering personnel decisions.

15. The plaintiff satisfied and exhausted the Massachusetts Commission Against Discrimination administrative remedies prerequisite of M.G.L 151B, prior to filing this action.

16. On October 22, 2013, Ms. Shaver promptly and responsibly found new employment, albeit at significantly lower pay, in a different industry. She has been unable to find work in her chosen field comparable to the position she held at Belmont Manor.

CAUSES OF ACTION

Plaintiff brings forth the following allegations supporting her causes of action:

Count I - HANDICAP DISCRIMINATION - M.G.L. c. 151B, §4

17. The plaintiff Lisa Shaver incorporates by reference the allegations of 1 - 15.

18. Belmont Manor discriminated against Ms. Shaver on account of her membership in the protected handicap class by seeking a pretext for her dismissal, much as it openly did with discharged handicapped employee Ms. Wardrop before her

19. Whether Ms. Shaver disclosed or did not disclose her osteoarthritis at time of hire is irrelevant for purposes of this action because Belmont Manor eventually treated her as handicapped. Its reluctant acquiescence to reasonably accommodate doctor-mandated orders for "light duty" served as an acknowledgement of handicap. Part (c) of M.G.L. c. 151B, §1(17) defines anyone perceived as "being regarded as having such impairment" as qualified for protected status.

20. The plaintiff is entitled to collect all damages resulting from the defendant's unlawful discharge of her.

Count II - THE MASSACHUSETTS PROTECTION FROM RETALIATORY ACTION BY HEALTH CARE FACILITIES ACT - M.G.L. c. 149, § 187(b)(4)

21. The plaintiff incorporates by reference the allegations of 6 and 10-11.

22. The defendant retaliated against the plaintiff when it used pretext from a pair of minor incidents on consecutive days to terminate Ms. Shaver for exercising her professional duty under M.G.L. c. 149, § 187. Belmont Manor ignored favorable evidence for the plaintiff from one of its own supervising employees and from unbiased third party witnesses, instead choosing to accept the versions touted by the two employees who had been affected by the plaintiff's state-mandated report.

23. The plaintiff is entitled to recover for all damages resulting from the defendant's retaliation.

Count III - REPORTS OF ABUSE OF PATIENTS ACT - M.G.L. c. 111, § 72G

24. The plaintiff incorporates by reference the allegations of 6, 10-11, 22.

25. The plaintiff is entitled to recover costs and treble damages for the defendant's unlawful retaliatory discharge of her.

Count IV - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

26. The plaintiff incorporates by reference the allegations of 3-16.

27. The plaintiff is entitled to recover for all damages resulting from the defendant's systematically reckless and willful outrageous conduct directed toward Ms. Shaver with the intent of intimidating her into resignation and with the impact of severe emotional suffering.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff Ms. Shaver prays for a judgment against the defendant Belmont Manor as follows:

1. Based on Counts I, II, or III, or a combination thereof, for an award of \$3,720.00 in base damages, plus ten months (thus far) interest at the statutory rate of 12% (current total of \$4,032.00), for lost income during the month and a half period of unemployment following defendant's unlawful discharge of the plaintiff. (This is calculated by multiplying Ms. Shaver's hourly wage of \$15.50 per hour times her average weekly hours of 40 times six for the number of unemployed weeks).

2. Based on Counts II, or III, or a combination thereof, for an award of \$4,646.40 in forward pay for the \$3.63 hourly wage cut between what Ms. Shaver earned at Belmont Manor and what she earned at the first job that replaced it from October 22, 2013 to June 23, 2013. (This is calculated by multiplying the lower wage of \$11.87 by 40 and subtracting that figure from the \$620 per week earned at Belmont Manor, and then multiplying that difference by 32 for the number of weeks employed).

3. Based on Counts II, or III, or a combination thereof, for an award of \$20,800.00 for five years in forward pay compensating for the \$2.00 hourly wage cut between what Ms. Shaver earned at Belmont Manor and what she earns at her current job. (This is calculated by multiplying \$13.50 by 40 for the number of hours she works in a week, subtracting this number from the \$620 per week earned at Belmont Manor, multiplying by 52 for the number of weeks in a year, and then by 5 for five years).

4. Based on Count IV for an award of \$20,000.00 in damages. Through no fault of her own, Ms. Shaver may never receive the opportunity to work again in her chosen profession. Her dignity and reputation as a beloved nursing home Activities Assistant have been forever tarnished and violated. Relationships with former friends, colleagues, and Belmont Manor residents have been severed, leaving Ms. Shaver permanently isolated from the environment and the people with whom she cherished interaction. She will never be able to return in the same way to the career from which she derived contentment and satisfaction.

5. Based on Count III, for the damages requested in 1-4 (totaling \$49,116.40) to be trebled, as required by [M.G.L. c. 111, § 72G](#), resulting in a base total of \$147,499.20, plus interest and costs of litigation.

6. For an award of such other and further relief, including equitable relief, as this court may deem just and proper.

7. Grand base total requested: \$147,499.20.

Respectfully submitted,

Plaintiff Lisa Shaver,

By her attorney,

<<signature>>

David A. Pearlman, Esq. (BBO # 671550)

Pearlman Legal Enterprises

One Boston Place, Suite 2600

Boston, MA 02108

david@pearlmanlegal.com

617-894-6893

Dated: August 5, 2014

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.