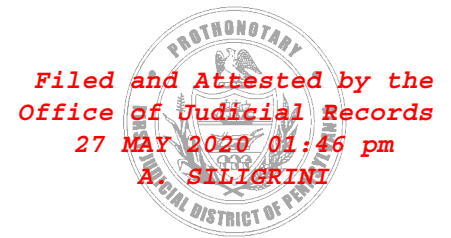


SWARTZ SWIDLER LLC

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DRAYONE BLAND
1249 Duncan Drive
Dresher, PA 19025

and

JENNIFER DELUCA
803 E Marson Run Parkway
Wilmington, DE 19802

Plaintiffs,

v.

VISITING NURSE ASSOCIATION OF
GREATER PHILADELPHIA
3300 Henry Ave. Suite 500
Philadelphia, PA 19129

Defendant.

COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY

No.

JURY TRIAL DEMANDED

CIVIL ACTION COMPLAINT

Plaintiff Drayone Bland (hereinafter "Plaintiff Bland") and Plaintiff Jennifer Deluca (hereinafter "Plaintiff Deluca") (hereinafter collective "Plaintiffs"), hereby complain as follows against Defendant Visiting Nurse Association of Greater Philadelphia (hereinafter "Defendant"), and avers as follows:

INTRODUCTION

1. This action alleges that Plaintiffs were fired in violation of the Pennsylvania Whistleblower Law, 43 P.S. §1421, *et seq.* Defendant provides in-patient nursing care. Plaintiffs were two employees of Defendant who objected to Defendant's failure to comply with proper

public safety protocols in response to the COVID-19 pandemic. Defendant retaliated against Plaintiffs by firing them in response to their objections.

PARTIES

2. Plaintiff Bland is an adult individual, with an address as set forth above in the caption.

3. Plaintiff Deluca is an adult individual, with an address as set forth above in the caption.

4. Defendant operates a facility which provides a variety of nursing services, including an in-patient hospice program in the Philadelphia area.

5. Upon information and belief, Defendant receives funds through the state, and thus qualifies as a “public body” for purposes of the Pennsylvania Whistleblower Law, 43 P.S. §1421.

6. At all times relevant herein, Defendant acted by and through its agents, servants, and employees, each of whom at all times relevant herein acted in the course and scope of their employment with and for defendant.

FACTUAL BACKGROUND

7. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

8. In or around early-March 2020, the World Health Organization declared a pandemic as related to the transmission of COVID-19.

9. Thereafter, health officials recommended that individuals practice social distancing, and that those unable to follow social distancing rules, due to essential job functions, wear protective gear, including masks, while at work.

10. Said recommendations were for the purpose of protecting employees with potential exposure from contracting the COVID-19 virus, and to prevent the further spreading of same.

11. Despite such recommendations, Defendant did not provide adequate protective gear to its employees.

12. Rather, on or about March 17, 2020, Defendant's agent, VNA Supervisor Tammy Berry (hereinafter "Supervisor Berry"), advised employees of the in-patient unit, that only employees treating COVID-19 positive patients would receive protective gear.

13. In response thereto, employees of the in-patient unit, began appearing at work with their own personal protective gear (i.e. homemade masks).

14. On or about March 25, 2020, Supervisor Berry advised Defendant's employees that they were not allowed to wear homemade masks while at work.

15. Due to Defendant's failure to provide proper protective gear to its employees, two employees of Defendant contacted the Occupational Safety Health Administration ("OSHA") to report same.

16. On or about April 17, 2020, during a staff-wide meeting, Defendant's Vice President of Resource Development Amy Sloane (hereinafter "VP Sloane") announced that Defendant was aware that employees had made complaints to OSHA.

17. VP Sloane stated that Defendant was working with OSHA to identify the individuals who had filed the complaint.

18. Further, VP Sloane stated that if an employee came forward to identify themselves as the individual who reported Defendant to OSHA, such employee would receive "leniency."

As to Plaintiff Bland

19. The foregoing paragraphs are incorporated herein as if set forth in full.
20. On or about January 8, 2020, Defendant hired Plaintiff Bland as a chaplain.
21. During the course of his employment, Plaintiff Bland did not receive any disciplinary action.
22. Rather, Plaintiff Bland received positive feedback regarding his performance.
23. In or around early March 2020, while participating in patient rounds, an employee requested that Defendant provide proper protective gear (i.e. masks and gowns) in light of the COVID-19 virus outbreak.
24. Approximately one week thereafter, during an employee wide conference call, Plaintiff Bland was advised by Supervisor Barry that employees were not in need of masks.
25. During this period, Defendant also removed previously available surgical masks from the employee's floor supplies.
26. Plaintiff Bland learned from employees that Supervisor Barry had further advised employees they were prohibited from bringing personal protective gear into the workplace (i.e. homemade masks).
27. In or around early April, 2020, Plaintiff Bland learned that a co-worker with whom he had close contact had reported as COVID-19 positive.
28. Thereafter, Plaintiff Bland began to suffer from shortness of breath.
29. Accordingly, on or about April 3, 2020, Plaintiff Bland reported to VP Savarese that he wished to undergo testing for COVID-19.
30. VP Savarese responded "we don't think you need to be tested."

31. Thereafter, Plaintiff Bland was called into a meeting with his supervisors and advised that in accordance with directives from VP Savarese and VP Sloan, Defendant did not believe Plaintiff Bland was at risk to contract the COVID-19 virus and thus did not need to be tested.

32. Plaintiff Bland's supervisors further added that if he did seek testing, he would need to do so "on his own time," and thereafter remain out of work until he received his test results.

33. On the afternoon of April 3, 2020, Plaintiff Bland privately underwent testing.

34. Thereafter, he did not return to work until he received a negative test result.

35. On or about April 10, 2020, Plaintiff Bland returned to work.

36. In or around mid-April 2020, Plaintiff Bland received a positive 90-day performance review from Supervisor Donna Geiger.

37. On or about April 16, 2020, Plaintiff Bland participated in a meeting with Defendant's employees wherein he voiced concern about Defendant's failure to administer COVID-19 tests to newly admitted patients.

38. Specifically, Plaintiff Bland reported that such failures by Defendant prevented Defendant from taking appropriate protective measures with regard to such patients, and thus risked further exposure of Defendant's employees, and other patients, to the COVID-19 virus.

39. On the afternoon of April 16, 2020, Defendant fired Plaintiff Bland.

40. VP Sloane and VP Savarese communicated the termination to Plaintiff Bland.

41. Defendant alleged Plaintiff Bland was terminated because he "did not pass the probationary period."

42. When Plaintiff Bland questioned same due to his positive performance evaluation, VP Sloan stated that it was Plaintiff Bland's "actions during the last two weeks that concern us."

43. In fact, Defendant terminated Plaintiff Bland in retaliation for raising concerns that Defendant's actions constituted a risk to the public safety.

As to Plaintiff Deluca

44. The foregoing paragraphs are incorporated herein as if set forth in full.

45. At all times relevant hereto, Plaintiff Deluca has suffered from emphysema (hereinafter Plaintiff's "Medical Condition").

46. In or around October 2016, Defendant hired Plaintiff Deluca as a registered nurse.

47. In or around mid-March 2020, Plaintiff Deluca directed several requests to Defendant's managers for protective equipment to be distributed to Defendant's employees.

48. On multiple occasions Plaintiff Deluca advised that such equipment was a necessary to prevent further spreading of the COVID-19 virus, and that Defendant's failure to do same would further exacerbate the public health crisis related to same.

49. Nonetheless, Defendant did not provide adequate protective equipment to employees throughout March 2020.

50. Due to Defendant's failure to provide same, and because of her Medical Condition, in or around mid-March, Plaintiff Deluca reported to work with her own personal mask.

51. On the first day which she reported to work with her personal mask, Plaintiff Deluca was advised by VP Savarese and Supervisor Barry that she was not allowed to wear her own mask at work.

52. Plaintiff Deluca objected to Defendant's rule against personal masks, and advised Defendant that she felt a mask was necessary due to her Medical Condition.

53. VP Savarese advised that Plaintiff could only wear a mask at work if she provided a note from her pulmonologist stating her need for same.

54. Plaintiff Deluca advised VP Savarese that due to closures of non-essential medical services during the COVID-19 pandemic, she was unable to procure such a note from her physician.

55. On or about March 25, 2020, Plaintiff Deluca again reiterated her request that Defendant provide its employees with protective equipment, and specifically masks.

56. In response to her request Supervisor Tammy advised masks would not be provided.

57. On or about March 26, 2020, Plaintiff Deluca contacted OSHA and reported Defendant's failures to provide proper protective equipment to its employees.

58. Plaintiff Deluca reasonably believed that Defendant's failure to provide proper protective equipment constituted a public safety hazard to both Defendant's employees.

59. On or about April 17, 2020, Plaintiff Deluca participated in the staff wide call identified above, wherein Defendant advised its employees that it was aware of the complaints made to OSHA.

60. On the same afternoon, Plaintiff Deluca was suspended.

61. Defendant alleged that Plaintiff Deluca was being suspended for "false claims."

62. Plaintiff Deluca did not return to work on any date following her suspension.

63. On or about April 27, 2020, Defendant fired Plaintiff Deluca.

64. Defendant advised Plaintiff Deluca that she was being terminated due to a social media post wherein she commented on Defendant's lack of proper protective equipment.

65. In fact, Defendant fired Plaintiff Deluca in retaliation for raising concerns that Defendant's actions constituted a risk to the public safety

COUNT I

Violations of the Pennsylvania Whistleblower Act

66. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

67. At all times relevant herein, Plaintiff Bland was an employee as defined by 43 P.S. §1422.

68. At all times relevant herein, Plaintiff Deluca was an employee as defined by 43 P.S. §1422.

69. At all times relevant herein, Defendant was an employer as defined by 43 P.S. §1422.

70. Defendant funding from the Commonwealth of Pennsylvania through Medicaid payments.

71. Defendant receives funding from the Commonwealth of Pennsylvania through grants.

72. Plaintiff Bland witnessed and reported wrongdoing to Defendant.

73. Plaintiff Deluca witnessed and reported wrongdoing to Defendant and OSHA.

74. Defendant fired Plaintiff Bland for reporting of such wrongdoing.

75. Defendant fired Plaintiff Deluca for reporting such wrongdoing.

76. As a result of Defendants' actions, Plaintiffs have suffered damages as set forth herein.

COUNT II
Termination in Violation of Public Policy

77. The foregoing paragraphs are fully incorporated herein as if set forth in their entirety.

78. Plaintiffs served the public policy of the Commonwealth by raising objection to practices of Defendant that would exacerbate the COVID-19 public health crisis.

79. Plaintiff Deluca served the public policy of this Commonwealth when she reported Defendant's wrongdoing to OHSA.

80. Defendant fired Plaintiffs in retaliation for their objections.

81. Defendants fired Plaintiff Deluca for reporting its actions to OSHA.

82. As a proximate and direct result of the above mentioned acts, Plaintiffs have been damaged and has suffered emotional distress, as well as mental anguish stemming from the deprivation of their rights.

WHEREFORE, Plaintiffs prays that this Court enter an Order providing that:

A. Defendants are to compensate Plaintiffs, reimburse Plaintiffs, and/or otherwise make Plaintiffs whole for any and all pay and benefits Plaintiffs would have received had it not been for Defendant's illegal actions, including but not limited to past lost earnings and future lost earnings.

B. Plaintiffs are to be awarded liquidated damages and/or punitive damages, as permitted by applicable law, in an amount believed by the Court or trier of fact to be appropriate given Defendant's deliberate, malicious, and outrageous conduct, and to deter Defendant and others from engaging in such misconduct in the future;

C. Plaintiffs are to be accorded any and all other equitable and legal relief as the Court deems just and appropriate;

D. Plaintiffs are to be awarded the costs and expenses of this action, prejudgment interest, and reasonable attorney's fees as provided by applicable law;

E. Plaintiffs' claims are to receive a trial by jury to the extent allowed by applicable law.

Respectfully Submitted,

/s/ Manali Arora

Manali Arora, Esq.

SWARTZ SWIDLER, LLC

1101 Kings Highway N., Suite 402

Cherry Hill NJ 08034

Phone: (856) 685-7420

Fax: (856) 685-7417

VERIFICATION

I, Drayone Bland, Plaintiff in this matter, hereby state that the facts set forth in the Complaint are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. §4904 (relating to unsworn falsification to authorities).

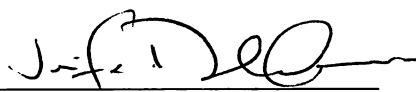
Dated: 5/13/2020


Drayone Bland

VERIFICATION

I, Jennifer Deluca, Plaintiff in this matter, hereby state that the facts set forth in the Complaint are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. §4904 (relating to unsworn falsification to authorities).

Dated: 5.9.2020



Jennifer Deluca