



STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO.: EN31JM-53700-E

Carolyn Schwebel and)
J. Frank Vespa Papaleo, Director)
New Jersey Division on Civil Rights,)
)
Complainants,)
)
v.)
)
Middletown Township,)
)
Respondent.)

FINDING OF PROBABLE CAUSE

Consistent with a Verified Complaint filed on February 6, 2008, and Amendment to the Verified Complaint, the above-named respondent has been charged with unlawful discrimination within the meaning of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1, et seq.) and specifically within the meaning of N.J.S.A. 10:5-4 and 10:5-12(d).

J. Frank Vespa-Papaleo (Director) is the Director of the Division on Civil Rights, and in the public interest, has intervened as a complainant in this matter pursuant to N.J.A.C. 13:4-2.2(e).

SUMMARY OF COMPLAINT

On June 25, 2004, Complainant and several other individuals filed a lawsuit in U.S. District Court District of New Jersey, Docket No. 04-30360 (SRC). In that action, Complainant alleged that Respondent failed to comply with the Americans with Disabilities Act (the ADA) 42 U.S.C. §12101 et seq., the Rehabilitation Act of 1973 and the New Jersey Law Against Discrimination (LAD) N.J.S.A. 10:5-1 to -49, with regard to certain publically owned property. The matter was submitted to arbitration and a consent order issued on July 31, 2007.

In the Verified Complaint, Complainant alleged that as a result of her participation in that protected activity, Respondent subjected her to reprisal when it terminated her service and refused to reappoint her to its Human Rights Commission.

SUMMARY OF RESPONSE

Respondent denied retaliating against Complainant for any unlawful reason. Respondent asserted that it did not terminate Complainant from the Human Rights Commission because it was a volunteer position. Furthermore, after her term on the Commission expired, it chose not to reappoint her.

BACKGROUND

Complainant is a resident of Leonardo, an unincorporated area within Middletown Township, Monmouth County, New Jersey and was a member of Respondent's Human Rights Commission for 18 years. Respondent is a municipality located in Monmouth County, New Jersey.

J. Frank Vespa Papaleo (Director) is the Director of the Division on Civil Rights and in the public interest, has intervened as a complainant in this matter pursuant to N.J.A.C. 13:4-2.2 (e).

SUMMARY OF INVESTIGATION

This investigation revealed sufficient evidence to support a reasonable suspicion that Respondent subjected Complainant to unlawful reprisal when it terminated her service and refused to reappoint her to its Human Rights Commission. The investigation supported Complainant's allegation that Respondent took this action because she filed a lawsuit entitled Advocates for Disabled Americans (AFDA), Carolyn Schwebel, Carmena Stoney v. Middletown Township, Docket No., 04-3030, Federal District Court District of New Jersey, charging Respondent with violations of the ADA, the Rehabilitation Act of 1973, and the New Jersey Law Against Discrimination.

Complainant served six (6) consecutive three (3) year terms, as a member of Respondent's eleven (11) member Human Rights Commission, most recently as the Commission chair person. Commission members are volunteers. Complainant stated that near the end of her term, December 31, 2007, she expected to be reappointed. However, she received a letter from Mayor Gerard Scharfenberger dated December 20, 2007, thanking her for her years of service, but not mentioning her reappointment. Complainant stated that historically, Respondent had difficulty finding individuals willing to serve on the Commission and that she was anxious to continue her service. Moreover, the Commission had and continues to have at least four (4) vacancies. According to Complainant, she contacted Respondent about her reappointment, but did not receive a response. Complainant then asked the governing body at its January 6, 2008, public meeting about her reappointment. In response, Complainant stated that Mayor Scharfenberger replied "...you are involved in litigation against the township and we felt...it was a conflict... and better to not reappoint you." She indicated that Respondent's attorney, Bernard Reilly, confirmed that, "...it was a recommendation based on the litigation."

Complainant explained that Respondent was referring to a lawsuit she and several other individuals filed on June 25, 2004, in New Jersey Federal District Court Docket No. 04-30360 (SRC). The matter was submitted to arbitration and a consent order issued on July 31, 2007. Complainant contends, however, that Respondent has failed to comply with the consent order.

In its answer, Respondent stated that Complainant's term expired and it just chose not to reappoint her. Respondent further asserted that there was no "...causal connection between the protected activity and Complainant's non-appointment to a new term." Respondent stated that "...Complainant is a plaintiff in a lawsuit filed in federal court against Middletown Township, said lawsuit is tentatively unresolved...."

An audio tape of the public meeting and a transcript verified that Mayor Scharfenberger and the governing body's attorney, Bernard Reilly acknowledged that Complainant's involvement in the 2004 litigation was the basis for the decision not to reappoint her.

ANALYSIS

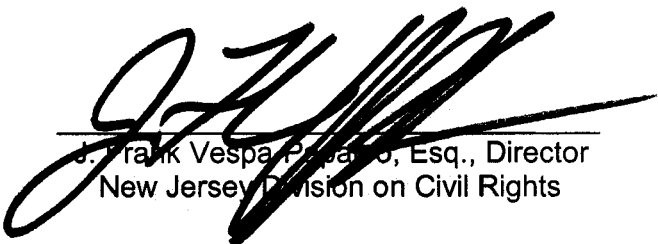
At the conclusion of the investigation, the Division is required to make a determination whether "probable cause" exists to credit a complainant's allegation of discrimination. Probable cause has been described under the New Jersey Law Against Discrimination (LAD) as a reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that the matter should proceed to hearing. Frank v. Ivy Club, 228 N.J. Super. 40,56 (App. Div.1988), rev'd on other grounds, 120 N.J. 73 (1990), cert.den., 111 S.Ct. 799. A finding of probable cause is not an adjudication on the merits but, rather, an "initial culling-out process" whereby the Division makes a preliminary determination of whether further Division action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218, 226 (App.Div.1978). See also Frank v. Ivy Club, supra, 228 N.J. Super. at 56. In making this decision, the Division must consider whether, after applying the applicable legal standard, sufficient evidence exists to support a colorable claim of discrimination under the LAD.

In the present case, the investigation disclosed that Respondent subjected Complainant to reprisal by deciding to terminate her service on it's Human Rights Commission and refusing to reappoint her based on her involvement in protected activity. Specifically, a federal lawsuit she and several other individuals filed in June 25, 2004, charging Respondent with violation of the ADA, the Rehabilitation Act of 1973, and the LAD on it's publicly owned property. The LAD protects volunteers as well as paid employees or members of agencies, from unlawful discrimination and reprisal.

FINDING OF PROBABLE CAUSE

It is, therefore, determined and found that Probable Cause exists to credit the allegations of the complaint.

12/1/08
Date


J. Frank Vespa, Esq., Director
New Jersey Division on Civil Rights