

ORIGINAL

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JENNIFER WARD,

Plaintiff,

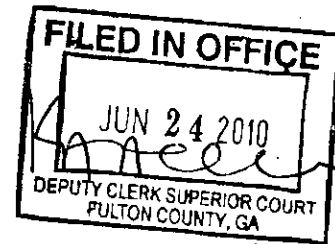
v.

Civil Action File No.

THE GEORGIA STATE ETHICS
COMMISSION and STACEY
KALBERMAN, in her Official
Capacity as the Executive Secretary of
the Georgia State Ethics Commission,

Defendants.

2010CV18742



COMPLAINT

Plaintiff Jennifer Ward ("Ward") states her Complaint against the above-named Defendants as follows:

PARTIES

1.

Ward was formerly employed by the Georgia State Ethics Commission. At all times relevant to this suit, Ward was a "public employee" for purposes of O.C.G.A. § 45-1-4. Ward is subject to the jurisdiction of this court.

2.

Defendant Georgia State Ethics Commission (the "GSEC") is an agency of the State of Georgia and is a "public employer" within the meaning of O.C.G.A. § 45-1-4(a)(4). The GSEC has offices located at 200 Piedmont Avenue, Suite 1402 -

West Tower, Atlanta Georgia 30334. The GSEC may be personally served at that location by service on its Executive Secretary, Stacey Kalberman.

3.

Defendant Stacey Kalberman is the current Executive Secretary of the GSEC. She is sued in her official capacity only. She may be personally served at her office at the GSEC, located at 200 Piedmont Avenue, Suite 1402 - West Tower, Atlanta Georgia 30334.

JURISDICTION AND VENUE

4.

This action is brought under the Georgia Whistleblower Act, O.C.G.A. § 45-1-4, et seq.

5.

Venue is proper in the Fulton County Superior Court because Fulton County is the principal site of operation of the GSEC.

FACTS

6.

Ward began employment with the GSEC on February 1, 2005 as an Administrative Manager. In June 2006, Ward was promoted to the position of Human Resources and Budget Administrator.

7.

Prior to Ward's discharge, she had never been subjected to any disciplinary actions by the GSEC.

8.

During her employment with the GSEC, Ward became aware that Thomas Plank ("Plank"), a GSEC Staff Attorney, had started a private law practice with another GSEC Staff Attorney, Yasha Heidari ("Heidari"). Plank's and Heidari's law firm is incorporated as a Georgia Limited Liability Company, doing business as Heidari & Plank, LLC.

9.

Although they were full-time employees of the GSEC, Plank and Heidari devoted significant amounts of time to representing clients in their private law practice during GSEC working hours.

10.

On at least one occasion, Heidari appeared in court on behalf of a client of Heidari & Plank, LLC when he was supposed to be working for the GSEC.

11.

On numerous occasions, Plank and Heidari used the GSEC's LexisNexis account to perform legal research for their private law practice.

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On numerous occasions, Plank and Heidari used the GSEC's LexisNexis account to perform legal research for their private law practice.

12.

Plank's and Heidari's operation of a private law practice while being full-time employees of the GSEC constitutes fraud, waste, and abuse within the meaning of O.C.G.A. § 45-1-4, et seq.

13.

Plank's and Heidari's operation of a private law practice while being full-time employees of the GSEC violated O.C.G.A. § 45-10-1, which requires that "[a]ny person in government service should . . . give a full day's labor for a full day's pay and give to the performance of his duties his earnest effort and best thought"

14.

Plank's and Heidari's operation of a private law practice while being full-time employees of the GSEC also violated Georgia State Personnel Board Rule 478-1-.07, which states that outside employment by state employees "may not conflict with an employee's State employment."

15.

In September 2009, Ward verbally reported the situation with Plank and Heidari to Ricky Thompson ("Thompson"), the Executive Secretary of the GSEC. Ward told Thompson that Plank and Heidari were operating a private law practice while being full-time GSEC employees. Ward informed Thompson that Plank's

and Heidari's actions violated Georgia law and the rules of the Georgia State Personnel Board.

16.

Plank and Heidari subsequently became aware of the fact Ward had complained to Thompson about their operation of a private law practice during the time they were being paid as full-time employees of the GSEC.

17.

On October 16, 2009, an unknown person emailed a complaint to Elizabeth Archer, the Georgia Inspector General, Governor Sonny Perdue, and numerous other recipients, complaining of Plank's and Heidari's operation of a private law practice while being full-time employees of the GSEC.

18.

Thompson, Plank, and Heidari all became aware of this anonymous email complaint.

19.

Although Ward did not send the anonymous email complaint, Plank and Heidari were convinced that Ward submitted the email complaint based on the fact Ward had previously complained to Thompson about their illegal activity.

20.

On November 18, 2009, Thompson informed Ward that Heidari had previously told him that he believed Ward submitted the anonymous email complaint to the Inspector General and the Governor.

21.

As the Human Resources and Budget Administrator for the GSEC, Ward was responsible for keeping track of sick and vacation leave for all GSEC employees, including Plank.

22.

Because of the responsibilities of her position, Ward became aware that Plank was abusing the GSEC's policies regarding sick leave.

23.

Plank systematically depleted his sick leave balance, but always maintained a high annual leave balance.

24.

This pattern of using sick leave as annual leave in a fraudulent manner violated state laws and GSEC rules and regulations, and also constituted fraud, waste, and abuse of public resources.

25.

In or around August 2009, Ward verbally informed Thompson, the Executive Secretary of the GSEC, of Plank's abuse of sick leave.

26.

Plank became aware of Ward's complaints to Thompson regarding Plank's abuse of sick leave.

27.

Thompson resigned from his position as Executive Secretary of the GSEC on August 19, 2009, to be effective October 18, 2009.

28.

Thompson was replaced by Plank, who was appointed as the Acting Executive Secretary of the GSEC effective October 19, 2009.

29.

Within 30 days of assuming the Acting Executive Secretary position, Plank terminated Ward in retaliation for Ward's complaints to Thompson regarding Plank's operation of a private law practice while he was a full-time employee of the GSEC and his abuse of sick leave.

30.

Plank's termination letter to Ward was dated November 16, 2009, and was hand delivered to Ward on November 18, 2009. A true and exact copy of Ward's termination letter is attached as Exhibit A.

31.

In the termination letter, Plank falsely accused Ward of committing various acts of "fraud, waste, and abuse." Plank manufactured these allegations against Ward solely in an attempt to discredit her, to disguise his retaliatory animus, and to harm Ward's reputation.

32.

Plank's wrongful actions caused Ward great injury, including lost wages, the loss of accumulated fringe benefits of employment, loss of retirement income, diminished future earning capacity, tarnishment of her reputation, great uncertainty regarding her future, emotional distress, humiliation, and embarrassment.

SUBSTANTIVE CLAIM

33.

Pursuant to O.C.G.A. § 45-1-4(b) and (d)(2), it is unlawful for a public employer to retaliate against a public employee for disclosing fraud, waste, abuse, or violations of law, rules, or regulations, in relation to any state programs or operations under the jurisdiction of such public employer.

34.

Plank terminated Ward in retaliation for making disclosures protected under O.C.G.A. § 45-1-4.

35.

The GSEC is liable for all economic and non-economic damages resulting from its acts of retaliation. O.C.G.A. § 45-1-4(e)(2)(D) and (E).

36.

Ward is entitled to reinstatement with the GSEC, as well as restoration of all benefits of employment lost as a result of her termination. O.C.G.A. § 45-1-4(e)(2)(B) and (C).

37.

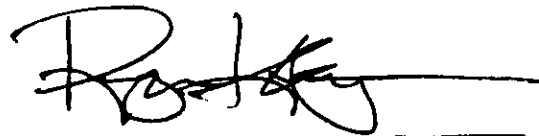
Ward is entitled to recover her attorneys' fees and all other costs of litigation. O.C.G.A. § 45-1-4(f).

WHEREFORE, Plaintiff demands that a trial by jury be had on all Counts and that following such trial judgment be entered on Plaintiff's behalf against Defendants granting the following relief:

- (i) Reinstatement of Plaintiff with back pay and such benefits as Plaintiff would have enjoyed had she never been terminated;

- (ii) If reinstatement is deemed inappropriate under the circumstances, the GSEC be ordered to compensate Plaintiff with three years of front pay;
- (iii) Compensatory damages in an amount to be proven at trial to compensate Plaintiff for the diminished future earning capacity, mental anguish, humiliation, pain and suffering, and such other damages as resulted from Defendants' improper conduct;
- (iv) Plaintiff's costs of this action including reasonable attorney's fees;
- (v) Punitive damages in an amount to be determined by the enlightened conscience of an impartial jury as warranted to deter Defendants from future wrongful conduct of the type proven at trial;
- (vi) Such further and additional relief as the Court may deem is appropriate.

Respectfully submitted on June 24, 2010.



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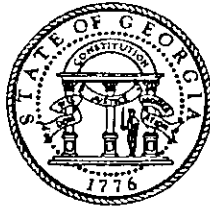
PARKS, CHESIN & WALBERT, P.C.
75 Fourteenth Street, 26th Floor
Atlanta, Georgia 30309
Telephone: (404) 873-8000
Facsimile: (404) 873-8050

Exhibit A

James C. Gatewood
Chairman

William H. Jordan
Vice Chairman

Tom Plank
Acting Executive Secretary



Sonny Watson
Member

Patrick N. Millsaps
Member

Kent Alexander
Member

State Ethics Commission

200 Piedmont Avenue
Suite 1402 – West Tower
Atlanta, Georgia 30334
(404) 463-1980
Facsimile (404) 463-1988
www.ethics.ga.gov

VIA INTRA-OFFICE HAND DELIVERY

November 16, 2009

Jennifer Ward
814 Calibre Lake Pkwy
Smyrna, GA 30082

Re: Termination of Employment

Dear Ms. Ward:

This letter serves as written acknowledgment that your employment with the State Ethics Commission ("Commission") is terminated effective November 17, 2009.

Reasons for termination include, but are not limited to, fraud, waste and abuse, (e.g., paying a former employee for one additional month of work when the Chairman of the Commission explicitly said that this former employee should be taken off the payroll effective the day he turned in his resignation); dishonesty (e.g., knowingly sending false information to the Commissioners; deliberately failing to provide information when requested), failure to maintain inventory (e.g., falsely certifying that inventory was properly disposed of and/or accounted for when this was not the case), failure to follow procedures (failure to incorporate documents into personnel files when told to do so; failure to follow procedures for ensuring proper termination of employees), and failure to maintain Commission management and employees' trust in your role in Human Resources and Budget.

Please report to the Secretary of State for out-processing.

Sincerely,

Tom Plank

Cc: file