

2009-55767 / Court: 190

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Loren Jackson - District Clerk
Harris County
ED101J015500462
By: Sharon Carlton

C. A. No. _____

GIL COSTAS, DVM,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
THE CITY OF HOUSTON, TEXAS,	§	
	§	
Defendant.	§	_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Gil Costas, DVM ("Dr. Costas" or "Plaintiff"), by and through his attorney of record, hereby complains of the City of Houston, Texas, and for cause of action and would respectfully show this Honorable Court the following:

1. INTRODUCTION

1.1. This suit, which arises under the Texas Whistleblower Act, Tex. Gov't Code §§554.001, *et seq.* ("TWA" or "Act"), is brought pursuant to Rule 190.3 of the Texas Rules of Civil Procedure and is to be administered under Discovery Control Plan Level 2.

1.2. Plaintiff demands a JURY TRIAL.

2. PARTIES

- 2.1. Plaintiff is a resident of Harris County, Texas. At all times material hereto, Plaintiff was a public employee of a local governmental entity.
- 2.2. Defendant City of Houston, Texas, is a local governmental entity as defined by Tex. Gov't Code §554.001 and may be served with citation by serving Mayor Bill White through the City of Houston, Texas, Secretary, Anna Russell, located at 900 Bagby St., Houston, Texas 77002.

3. VENUE

- 3.1. Venue of this proceeding is proper in Harris County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code §15.035 as the cause of action accrued here.

4. JURISDICTION

- 4.1. The amount in controversy exceeds the minimal jurisdictional limits of this Court. Jurisdiction is proper pursuant to Tex. Gov't Code §554.007(b).

5. FACTS

- 5.1. From May 2006 until the date of his wrongful termination on February 3, 2009, Dr. Costas worked as a veterinarian for the City of Houston—Bureau of Animal Regulation and Care (“BARC”). BARC is “an appropriate law enforcement authority” as defined by Tex. Gov't Code §554.002.

- 5.2. In November and December 2008, and January 2009, Dr. Costas reported violations of law to then BARC Chief Veterinarian, Dr. Eunice Ohashiegbula-Iwunze (“Dr. O”), and BARC Interim Bureau Chief, Barbara Sudhoff-McGill. Upon information and belief, some of the complaints have been investigated by the City of Houston Police Department-Office of Inspector General (“OIG”).¹
- 5.3. The violations of law include, but are not limited to, Texas Penal Code §42.09 (animal cruelty), Texas Administrative Code, Ch. 13 and Title 21 of the United States Code (state and federal controlled substances acts), and the Veterinary Licensing Act, Ch. 801 and Texas Occupations Code (unauthorized practice of veterinary medicine, misuse of DEA narcotics registration).
- 5.4. In November and December 2008, Dr. Costas complained that BARC staff veterinarian Dr. David Rundell had insufficient licenses to handle controlled substances and had engaged in animal cruelty. He also complained that Dr. O permitted these violations to occur and otherwise covering-up and ignoring the violations.

¹ Dr. O indicated that the OIG would be asked to investigate his complaints; however, it was not involved by the City until months later and after Dr. Costas was wrongfully terminated. The formal OIG report concerning Dr. Costas’s complaints was not available at the time of the filing of this lawsuit.

- 5.5. Within approximately two (2) weeks of making the November 2008 report, Dr. Costas was disciplined by Dr. O. As an animal rights activist, Dr. Costas remained undeterred in his quest to ensure that animals would not suffer at the hands of uncaring, untrained, or unlicensed personnel. Accordingly, in December 2008, he wrote another complaint in which he addressed Dr. Rundell's continued illegal acts, the City's refusal to address same, and Dr. O's continued cover-up and blatant retaliation against Dr. Costas for having made reports of violations of law.
- 5.6. Then, on February 3, 2009, within 90-days of having made a report of a violation of law to Dr. O and Interim Bureau Chief Sudhoff-McGill, Dr. Costas was terminated. The alleged basis for termination was that Dr. Costas lacked "a current DPS registration...." This statement is blatantly false and was known as such to BARC well before February 2009. The City was simply trying to hurriedly squelch Dr. Costas and discredit him. Its motive is further evidenced by the misquoting of the Texas Administrative Code section it relied upon.
- 5.7. Following the termination, and after receiving unequivocal evidence that the basis for termination was false, the City continued its campaign against Dr. Costas by repeatedly expressing the falsities to the press.

- 5.8. In March 2009, Dr. Costas asked City of Houston Mayor Bill White to investigate the facts surrounding his termination, and to ask City employees to cease maligning and disparaging him. In that memorandum, Dr. Costas provided a significant amount of supporting data, including evidence of his proper licensure. He also asked Mayor White to initiate any appeal process available to him, and to reinstate him since the alleged basis for termination was demonstrably false. The City did not reply to these requests.
- 5.9. In April 2009, in apparent retaliation for having elevated his complaints, Dr. O filed a baseless complaint with the Texas State Board of Veterinary Medical Examiners (“Board”) against Dr. Costas. During this time, the Board was also investigating allegations brought in December 2008 and January 2009 by a citizen against Dr. O and Dr. Rundell.
- 5.10. In June 2009, the Board issued its findings which exonerated Dr. Costas,² and, not surprisingly, found that Dr. O and Dr. Rundell violated the Veterinary Licensing Act, Ch. 801, the Texas Occupations Code, and various Board rules and regulations.³

² A copy of the June 24, 2009, letter from the Board is attached hereto as Exhibit “A”.

³ Copies of the June 11, 2009, Agreed Orders issued to Drs. O and Rundell are attached hereto as Exhibits “B” and “C”. The Agreed Orders were signed by Drs. O and Rundell in early April 2009, and adopted by the Board in June 2009.

5.11. Perhaps most tellingly, Dr. O filed the Board complaint against Dr. Costas on the same date she signed-off on the Board's findings against her. The retaliatory motive against Dr. Costas, from November 2008 through the date of his termination, and continuing thereafter, is plain to see. The City's thinly veiled attempt to support the separation under false guises must be remedied.

6. CAUSE OF ACTION

- 6.1. Defendant's actions set forth above, as well as other facts that will be developed through discovery, violate the Texas Whistleblower Act, Tex. Gov't Code §554.001, *et seq.* Plaintiff was terminated in retaliation for reporting a violation of law to an appropriate law enforcement authority. Plaintiff further contends that the false report to the Board, as well as the knowingly false statements made to the media, create independent grounds of recovery under the Texas Whistleblower Act. Plaintiff has exhausted all administrative prerequisites to the filing of suit as required by Tex. Gov't Code. §554.006.
- 6.2. Because Dr. Costas was terminated, and otherwise retaliated against, within 90-days of reporting a violation of law to an appropriate law enforcement authority, a rebuttable presumption exists that the City is liable for retaliating against him under the Texas Whistleblower Act.

7. JURY DEMAND

- 7.1. Plaintiff hereby makes his request for a jury trial in this cause pursuant to Rule 216 of the Texas Rules of Civil Procedure and deposits with the District Clerk of Harris County, Texas, the jury fee of thirty (\$30.00) dollars.

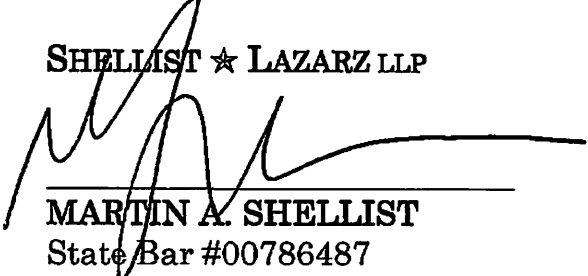
8. PRAYER

- 8.1. Plaintiff respectfully prays for the following relief:
- 8.1.1. Judgment against Defendant for damages sustained by Plaintiff as alleged herein, including actual damages, special damages, compensatory damages, lost wages, emotional damages, punitive damages, attorney's fees, costs, lost benefits, interest, and any other damages allowed by law under Tex. Gov't Code §554.003;
 - 8.1.2. Attorney's fees, costs, and expenses, as permitted by Tex. Gov't Code §554.003;
 - 8.1.3. Injunctive relief, including, but not limited to, reinstatement to his former or an equivalent position, with reinstatement of fringe benefits and seniority rights;

- 8.1.4. A civil penalty not to exceed \$15,000 against both Dr. Eunice Ohashiegbula-Iwunze and Michael Terraso, Assistant Director—Environmental Services Division (he signed Dr. Costas’s termination letter), pursuant Tex. Gov’t Code §554.008 for taking adverse action against Dr. Costas;
- 8.1.5. Order Defendant to inform all employees of their rights under the Texas Whistleblower Act by placing a sign in prominent locations throughout the workplace, pursuant to Tex. Gov’t Code §554.009; and,
- 8.1.6. Such other and further relief, at law or in equity, general or special, to which Plaintiff may show himself justly entitled.

Respectfully submitted,

SHELLIST ★ LAZARZ LLP



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