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LYNN

Fired official wins suit vs. city

Jury awards former comptroller nearly \$1 m; figure may grow

By **Alan Leo** GLOBE CORRESPONDENT JUNE 01, 2014

A jury awarded Lynn's former comptroller nearly \$1 million last week in a whistleblower lawsuit after finding that he was fired in retaliation for testifying at a City Council hearing against his boss, the city's chief financial officer.

The jury deliberated Wednesday afternoon and Thursday morning at Essex Superior Court in Salem before agreeing that John Pace's firing in 2011 violated the state Whistleblower Protection Act, and that his boss, then-CFO Richard Fortucci, had intentionally interfered with Pace's employment contract.

Rejecting the defendant's contention that Pace was fired for overpaying himself nearly \$3,000, the jury found that the city and Fortucci together owed Pace \$352,000 for lost wages, \$360,000 for lost pension benefits, and \$250,000 for emotional distress.

"My integrity that was questioned by Mr. Fortucci and the City of Lynn councilors has now been restored," Pace said after leaving the courthouse Thursday.

"Obviously we were disappointed with the verdict," said Thomas Drechsler of Byrne & Drechsler, a Boston law firm representing the city in the lawsuit. He said the city was weighing its options, including an appeal, a motion for a new trial, or an offer to settle with Pace.

"We're going to look at all avenues," Drechsler said.

Fortucci, who was represented separately, could not be reached for comment. His lawyer, Ronald Ranta, did not respond to a request for an interview.

To reach a verdict, the jurors weighed testimony covering more than a decade of Lynn city politics.

Pace had held Lynn's top financial post as CFO until 2003, when the city's previous mayor replaced him with Fortucci, the treasurer. Pace remained comptroller and reported to his former subordinate until 2011, when a new mayor, Judith Flanagan Kennedy, suspended Fortucci and again named Pace CFO, albeit in an acting capacity.

To make the reversal permanent, Kennedy needed the approval of the City Council, but after three days of testimony from Kennedy, Pace, and others, the council rejected her request to remove Fortucci, by a vote of 11-0.

While acting as CFO, Pace was paid the job's weekly stipend of about \$500, on top of his annual comptroller's salary of \$111,000. After the council vote, Pace continued to collect the stipend for another six weeks.

In court documents, Fortucci contended that the overpayment amounted to self-dealing by the city's comptroller and that he had no choice but to fire Pace. Pace maintained that the error was a result of miscommunication, that he was the one who had corrected it, and that he had offered to repay the difference.

According to Kennedy, she and Fortucci had also discussed how Pace would repay the money, and that Fortucci had surprised her by firing Pace, over her objections, at the end of a budget meeting in her office.

When she asked why, according to Kennedy, Fortucci indicated to her that the order had come from Timothy Phelan, City Council president at the time. Phelan, who declined to comment to the Globe, had clashed frequently with Kennedy and ran against her, unsuccessfully, last year.

Fortucci maintained the decision to fire Pace was his own.

When the CFO's contract expired last year, Kennedy did not renew it. Fortucci remains Lynn's treasurer.

“What came out in the trial was the political sordidness of the city of Lynn,” said Pace’s lawyer, Harold Lichten of Lichten & Liss-Riordan. “The hope is that it will send a warning to the city that decisions should be made upon merit and not political affinity.”

The Massachusetts Whistleblower Protection Act protects public employees from retaliation for reporting or objecting to activity they reasonably believe violates a law or regulation.

The law gives Essex Superior Court Judge Timothy Feeley the discretion to triple the actual damages — a move observers say is likely, given the jury’s finding that Fortucci acted with “spiteful and malignant purpose.”

With triple damages, legal fees, and interest, the award could approach \$4.3 million, making it one of the largest payouts of its kind, legal specialists said.

“This would be one of the largest awards that I’m aware of under the Massachusetts whistleblower statute,” said James S. Weliky, a partner at Messing, Rudavsky & Weliky, P.C., which specializes in plaintiff’s employment law.

Weliky said he was encouraged by the size of the jury’s award.

“Employees who go through these experiences generally suffer a tremendous amount of emotional distress,” Weliky said. “It’s great to see the jury recognize the toll of being terminated from a position that a person has had for decades.”

Calling any potential payout a “bonus,” Pace said the most important victory was his reputation.

“My son will be able to look people in the eye,” Pace said, “and say, ‘My father never did anything wrong.’”

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