New York Court of Appeals Gives Broad Reading to New York City Human Rights Law's Retaliation Provision

On March 31, 2011, in *Albunio v. New York City, N.Y.*, the New York Court of Appeals broadly construed the word "oppose" within the retaliation provision of the New York City Human Rights Law. This is another decision in the recent trend of state court decisions, including Court of Appeals decisions, giving broad reading to the City Human Rights Law in light of the "Local Civil Rights Restoration Act of 2005" ("LCRRA"). The LCRRA provided that the provisions of the City Human Rights Law should be "construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws...have been so construed." N.Y. Admin. Code § 8-130.

Under New York Administrative Code § 8-107(7), to prove retaliation, a plaintiff must show that he or she "opposed any practice forbidden under this chapter." In Albunio, two employees of the New York City Police Department sued the City, alleging that they were retaliated against in violation of the City Human Rights Law. A jury agreed with the Plaintiffs, and the judgment was affirmed by the Appellate Division, leading to the appeal to the Court of Appeals.

The first employee, Connors, filed a complaint with the police department's Equal Opportunity office, alleging that his second-level supervisor, Hall, had discriminated against another employee, Sorrenti, based on his sexual orientation. According to the Court of Appeals, because Connors filed a complaint, he had "opposed" discrimination within the statute. As there was evidence that Hall knew about the complaint and adverse actions had been taken against Connors, the Court of Appeals affirmed the jury's conclusion that Connors had been retaliated against under the statute.

The more difficult question for the Court of Appeals was whether the second plaintiff, Albunio, had "opposed" any discriminatory practice. According to the Court of Appeals, Albunio recommended Sorrenti for a position after interviewing him. She then sat in on a second interview of Sorrenti, primarily conducted by her immediate supervisor, Hall. Allegedly, Hall questioned Sorrenti in detail about his marital status and his relationship with another police officer. According to the Court's opinion, after the interview, Hall told Albunio he had selected another candidate because he "found out some f___d up sh__ about Sorrenti and . . . wouldn't want him around children." Plaintiffs claimed that a few months later, Albunio met with Hall and Patrick, Hall's supervisor, during which Patrick told Albunio that he and Hall were thinking about replacing her, and Hall interjected that it was due to her utilization of bad judgment in selecting personnel, citing Sorrenti as an example. According to the Court of Appeals, Albunio stated that she would stand by her recommendation of Sorrenti, and was then told that her best interest would be to find another assignment. The opinion states that she ultimately found another assignment which was less favorable than her role under Hall.

The Court of Appeals concluded that Albunio had "opposed" discrimination during the meeting with Patrick and Hall, finding that that "[w]hile she did not say in so many words that Sorrenti was a discrimination victim, a jury could find that both Hall and Albunio knew that he was, and that Albunio made clear her disapproval of that discrimination by communicating to Hall, in substance, that she thought Hall's treatment of Sorrenti was wrong." The court also found that there was a causal connection

between Albunio's statement during the meeting and her removal from her position, agreeing with the jury that Albunio had been retaliated against.

In reaching its decision, the Court of Appeals specifically stated that it was "[b]earing in mind the broad reading that we must give to the New York City Human Rights Law." This decision comes on the heels of other recent decisions giving broad interpretations to the City Human Rights Law. For example, the Court of Appeals recently held in Zakrzewska *v. New Sch.*, 928 N.E.2d 1035 (N.Y. 2010), that the Faragher/Ellerth defense to sexual harassment claims does not apply to actions under the City Human Rights Law, but an employer's anti-discrimination policy may only mitigate civil penalties and punitive damages in some circumstances. Similarly, in *Williams v. New York Housing Auth.*, 872 N.Y.S.2d 27 (N.Y. App. Div. 1st Dep't 2009), the Appellate Division held that a plaintiff can prove hostile work environment claims by showing by a preponderance of the evidence that he or she was treated worse than other employees because of a protected characteristic, rejecting the federal "severe and pervasive" standard.

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