

IN THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA

DAVID BOYD,
Plaintiff,
Vs.

CASE NO. 2005-CA-00034-P

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
FLORIDA DEPARTMENT OF HEALTH,
PEOPLE FIRST, AND THE STATE OF FLORIDA,
Defendants.

**COMPLAINT FOR VIOLATION OF FLORIDA STATUTE 112.3187 ET SEQ.
AND FOR WRONGFUL TERMINATION**

Plaintiff, DAVID BOYD (“BOYD”) by undersigned counsel, files this Complaint against Defendants THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (“FDEP”), THE FLORIDA DEPARTMENT OF HEALTH (“FDOH”), PEOPLE FIRST, AND THE STATE OF FLORIDA (“THE STATE”) (hereinafter collectively referred to as “THE STATE” unless specifically noted otherwise) and allege:

JURISDICTION AND VENUE

1. This suit is brought against the Defendants pursuant to Florida Statutes Section 112.3187 et seq. of the Florida Whistle-Blower Act, (“Whistleblower Act”), and other provisions of law.

2. Jurisdiction is conferred by this Court by:

(a) Florida Statutes Section 34.01 (1)(c)(4) (1995) because BOYD is seeking more than \$15,000 in damages exclusive of costs, interest and attorney’s fees.

(b) Additionally, jurisdiction is conferred upon this Court pursuant to Article V, Section 20(e)(3) of the Florida Constitution and Florida Statutes Section 26.012(2)(c) (1995) because equitable relief is sought by BOYD.

3. Venue is proper for the Circuit Court of Monroe County because:

(a) BOYD was employed in Monroe County by the Defendants, which at all times relevant hereto had and still have offices in Monroe County. Monroe County is a subdivision of the STATE OF FLORIDA and Defendants FDEP and FDOH now, and at all times material hereto had main offices in Monroe County, Florida.

(b) Additionally, pursuant to Florida Statutes Section 47.051 because the acts which gave rise to BOYD'S claim occurred in Monroe County.

(c) Venue also lies here pursuant to Florida Statutes Section 112.3187 et seq. because the retaliatory personnel action occurred in Monroe County.

CONDITIONS PRECEDENT

4. BOYD has complied with all conditions precedent in this case, or they have been waived.

PARTIES

5. Plaintiff BOYD is a citizen of the United States who resides in Monroe County, Florida and is sui juris.

6. Defendant STATE OF FLORIDA is, and at all times material hereto, the entity representing this state and is subject to the laws of Florida. Defendants FDEP and FDOH are state agencies of the STATE OF FLORIDA and Defendant PEOPLE FIRST has been established to administer employee leave, payroll, benefits and other

bookkeeping for FDEP, FDOH and other state agencies, and is therefore also subject to all such laws.

7. Plaintiff BOYD was an “employee” within the meaning of section 112.3187 of the Florida Statutes, and Florida law during all relevant times.

8. Defendant is an “employee within the meaning of section 112.3187 of the Florida Statutes because it is an agency that employs ten (10) or more persons.

9. At all times material to this action, the Defendants and certain of its representatives engaged in conduct which violates Florida’s Whistleblower Statute, because BOYD suffered adverse employment consequences, including but not limited to termination for complaining about Defendants’ failure to properly carry out its duties to the public, and provide for the health, safety and welfare of the people of Florida.

STATEMENT OF FACTS

10. On or about the year 1999 BOYD began his employment with the FDEP which oversees the Florida Park Service, and worked in their office in Key Largo as a respected employee overseeing, among other things, permit applications for new projects to determine if they were consistent with the goals of the FDEP and should be approved.

11. On or about 2003 to 2004, the FDEP was considering the expansion of the roads leading into the Florida Keys, known as the 18-Mile Stretch Project (“The Project”).

12. It was BOYD’S job to comment on the environmental impacts of such projects and to write his comments on whether permit applications, such as the one needed for the Project, was consistent with Florida law and environmental safeguards.

13. Governor Jeb Bush strongly favors the Project.

14. Despite the strong backing of the Governor for the Project, on or about the months of August 2003 to January 2004 BOYD correctly pointed out in his official written comments that the Project should not be approved. BOYD correctly observed in his written comments and oral communications that the goal of the FDEP and of Florida laws is to preserve the environment of the Florida Keys. Recent scientific studies have demonstrated that up to 40% of the coral cover has disappeared from the Florida Keys reef tract, in part because anthropogenic impacts such as excessive nutrient loading from poor sewage disposal practices in the Florida Keys. Monroe County is under a state mandate to install a central sewer system by 2010, but is unlikely to achieve that goal in a timely fashion. Thus, the Project, which would result in an increase in the number of people entering the Keys along the main roads, was in violation of Florida law and the goals of the FDEP, and should therefore not be permitted.

15. BOYD sent his written comments along to his superior, Dr. Renate Skinner who agreed with BOYD'S analysis and supported his conclusion that a permit should not be granted for the Project. The comments of BOYD and his superior, Dr. Renate Skinner, were sent on to the South Florida Management Water District, a department which is under the thumb of the Governor, and which has been known to threaten and to carry out retaliation against employees who voice disapproval for projects supported by the Governor, such as in the case involving Herb Zebuth.

16. On or about March 2004, the District Bureau Chief George Jones, advised BOYD and his superior, Dr. Renate Skinner that his superior, Mark Bullock, who is a high ranking official of the Florida Park Service, wanted "their heads on a platter" because

they defied the wishes of high ranking officials in Tallahassee by expressing their belief that the Project should not be approved by the FDEP.

16. As a result of her decision to recommend disapproval of the Project, Dr. Renate Skinner was forced to take an early retirement.

17. BOYD was continually threatened with adverse employment consequences including transfer or termination as a result of his written comments and his conclusion that the Project should not be approved, however, due to his integrity and confirmed belief that the Project was inconsistent with Florida law, the National Environmental Protection Act, and the goals and policies of the FDEP, BOYD refused to submit to the threats and intimidation of his superiors, and refused to alter his report, his analysis, his findings or his conclusion that the Project should be denied approval by the FDEP.

18. In an unprecedented move, in order to retaliate against BOYD, while at the same time attempting to hide this retaliation, the Florida Parks Service and the FDEP announced in the year 2004 its plans to shut down its office in Key Largo, where BOYD was employed, and announced that if BOYD wished to continue working for the FDEP, he would have to accept a transfer to an office over 170 miles away in Hobe Sound, or else he would be terminated.

19. When the decision to close the office was first announced, BOYD was told that the State of Florida would not pay for his relocation expenses if he chose to relocate to Hobe Sound, despite the fact that the FDEP Directive No. 485 specifically provides for the payment of such moving expenses.

20. Because Dr. Renate Skinner was forced to retire, and due to the fact that the remaining full time employee was offered equivalent employment by FDEP close to her

home, it is clear that the closing of the Key Largo Office by the FDEP was done solely in retaliation against BOYD (and Dr. Renate Skinner) due to his refusal to withdraw his comments and his conclusion that the Project should not be approved by the FDEP.

21. BOYD chose not to relocate to Hobe Sound due to the tremendous strain that this would place upon himself and his family, and accepted employment with the Florida Department of Health (FDOH).

22. Even while at the Florida Department of Health the retaliation did not cease, and the health insurance that BOYD receives for his wife and his four children has been repeatedly cancelled, reinstated, and then cancelled again, and BOYD has been unfairly terminated from this subsequent employment with the STATE OF FLORIDA shortly before achieving vesting, which has resulted in tremendous emotional distress and financial loss for BOYD and his family.

23. As described above, BOYD objected to, refused to participate in activities, policies, and practices of Defendants which are in violation of laws, rules and regulations which govern the actions of the Defendants. The FDEP, FDOH, PEOPLE FIRST and the STATE OF FLORIDA violated its own laws, rules, regulations and policies by failing to disapprove the Project and by seeking retaliation against BOYD for his position in recommending that the FDEP not approve the Project.

COUNT 1: VIOLATION OF FLORIDA STATUTE 112.3187

24. Plaintiff BOYD repeats the allegations of paragraphs 1-23 as if fully set forth herein.

25. The above-described actions of the Defendants, both jointly and severally constitute a violation of Florida Statute 112.3187 in that Plaintiff BOYD suffered adverse employment consequences including, but not limited to retaliation, lack of promotion,

negative reports and documentation against him in his employment file, discrimination, lack of employment benefits and employment opportunities, loss of paid leave, and ultimately dismissal, and/or the closing of his local office which was tantamount to dismissal, due to his written and oral disapproval of the Project to his coworkers, his superiors and to others which exposed the failure of FDEP to adhere to its own rules, regulations and policies, and which exposed the failure of FDEP to properly carry out its essential function of protecting the environment for all Floridians and instead protecting the interests of high ranking public officials at the expense of the environment and of the people of Florida who these officials are sworn to serve.

26. The retaliatory action of the Defendants are all the more serious and should not be tolerated by this Court because the people of Florida look to the FDEP to protect the environment and the interests of the people, and if employees of the FDEP are not free to operate outside of the improper influence of pressure from politicians and business interests that drive the opinions of high ranking officials within the Parks Service and the FDEP, then the people will suffer, our environment will suffer, and the integrity of our political institutions will suffer.

27. As a direct and proximate result of the wrongful conduct of the Defendants and their retaliatory conduct, the Plaintiff has been harmed.

28. Plaintiff BOYD has retained the undersigned to represent him in this matter and has agreed to pay him a reasonable fee for his services.

WHEREFORE, Plaintiff requests that this Honorable Court will grant judgment in his favor, and respectfully requests that this Court grant the following relief:

- a) enter an order finding that the Defendants have violated Florida Statute 112.3187 (The Florida Whistleblower Act) and have thus violated Plaintiff's constitutional rights.
- b) order the Defendants to make Plaintiff whole as provided by F.S. 112.3187
- c) award Plaintiff compensatory damages, including, but not limited to damages for emotional distress, humiliation, and public shame.
- d) award Plaintiff compensation for past pecuniary losses including, but not limited to back pay, with pre-judgment interest, loss of vacation pay, loss of health insurance benefits, loss of retirement benefits and all other losses due to the retaliatory dismissal from his employment with FDEP and the Florida Department of Health.
- e) award Plaintiff damages, costs, interest and attorney's fees all as provided under the Florida Whistleblower Statute.
- (f) Grant such further relief as the Court deems just and proper.

COUNT 2: WRONGFUL TERMINATION

29. Plaintiff repeats the allegations of paragraphs 1-23 as if fully set forth herein.

30. As a result of the above-described actions by the Defendants, Plaintiff has been wrongfully terminated in violation of Florida Statute 443.

31. As a direct and proximate result of the wrongful termination by the Defendants, the Plaintiff and his family have been harmed. They have lost their health insurance, lost significant income and employment benefits and have suffered emotional distress.

32. Plaintiff has retained the undersigned to represent him in this matter and has agreed to pay him a reasonable fee for his services.

WHEREFORE, Plaintiff seeks all remedies requested in Count 1 of this complaint.

TRIAL BY JURY IS DEMANDED FOR ALL COUNTS OF THE COMPLAINT

Respectfully submitted:

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