

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
SYRACUSE DIVISION

ANTHONY M. SCRO,

Plaintiff,

v.

COMPLAINT

THE BOARD OF EDUCATION OF THE
JORDAN-ELBRIDGE CENTRAL SCHOOL
DISTRICT; DIANA FOOTE; CONNIE
DRAKE and PENNY L. FEENEY

Case No.: 5:11-CV-1106
(GLS/ATB)

Jury Demand

Defendants

Plaintiff, ANTHONY M. SCRO, through his attorneys, O'HARA, O'CONNELL & CIOTOLI, for his Complaint against the Defendants, states as follows:

JURISDICTION

1. Plaintiff brings this action pursuant to Section 1983 of the Civil Rights Act of 1871, 42 U.S.C. §1983, for violation of Federal Constitutional rights, including violation of her First Amendment rights and retaliation.

2. This Court has jurisdiction under 28 U.S.C. §1331 and has supplemental jurisdiction for the state causes of action under 28 U.S.C. §1367.

3. Plaintiff has complied with applicable notice of claim requirements under New York State law by serving the Defendants with a timely Notice of Claim on September 16, 2011. Annexed hereto as Exhibit "A" is a true and correct copy of Plaintiff's Notice of Claim.

4. This action has been commenced within the time required by General Municipal Law §50-i.

THE PARTIES AND VENUE

5. Plaintiff, Anthony M. Scro (“Scro”), resides at _____ City of Syracuse, County of Onondaga, State of New York.

6. Defendants Jordan-Elbridge Central School District (the “District”) is a municipal corporation organized under the laws of New York State, with a principal office located in the Village of Jordan, State of New York.

7. Defendant, The Board of Education (the “Board”), are the duly elected officials who serve as the governing body of the District.

THE FACTUAL BACKGROUND

8. Scro began his employment with the District on October 31, 2007, as Treasurer of the school district. Thereafter the Board reappointed Scro at the beginning of the following three fiscal years at the annual reorganization meetings in July, each to a new 12 month term as Treasurer. Scro was last appointed on July 7, 2010, to that position by the Board to serve a one year term, commencing July 1, 2010.

9. While serving as District Treasurer and pursuant to his duties, Scro reported to the District’s internal auditor a series of abuses he noticed being committed by the Director of Operations, Paula VanMinos (“VanMinos”). He reported that VanMinos had failed to reimburse the District for expenses she had charged to the District credit card or to provide documentation showing the expenses were legitimate.

The expenses involved a trip she had taken to New York City for a conference on workers' compensation. VanMinos had assured the Board that the entity holding the conference would reimburse the District for her expenses but it never has provided reimbursement.

10. Scro also reported to District officials that the Non-Represented group were supposed to receive raises based on the Board's actions of February 2010 and July 7, 2010, stating that the raises were given per their contractual agreements. He also discovered VanMinos was given a \$10,000 raise that the Board failed to disclose to the public for over two months.

11. Scro also discovered that VanMinos manipulated the contractually agreed to performance review process to which the non represented employees annual pay raises were tied. The manipulation resulted in a substantially lower pay raise for Scro.

12. Scro also raised an issue of sexual discrimination because VanMinos was giving larger raises to female employees than to male employees. He continued to inform District officials, such as Superintendent Marilyn Dominick ("Dominick"), the internal auditor Alicia Mattie and various Board members, of his grievances for these and the above issues.

13. After reporting the above stated improprieties of VanMinos, Scro experienced a pattern of mistreatment and retaliation that included additional comments of allegedly poor performance and allegations that he was unable to get along with co-workers. Scro was also accused of attacking co-workers and creating a "hostile work environment," even though Scro made his complaints of a hostile work environment in

confidence and the supposed “victims” of these personal attacks, such as Amy Lewis, said they were never attacked by Scro.

14. On September 2, 2010, the Board inappropriately forced Scro to take bereavement leave for the death of his grandson in July, despite his objections. Scro was told that if he did not take bereavement leave, he would be suspended without pay for his poor work performance and bad record-keeping allegedly reported to the District.

15. During the September 2, 2010 meeting, Dominick said Scro did not supply information to external auditors Green & Seifter in May 2010 and, as a result, the audit is now behind. Dominick also said during this meeting that Green & Seifter’s audit allegedly showed the books kept by Scro were not accurate, and this accounted for Scro’s poor performance review in July 2010.

16. Scro contacted the external auditor from Green & Seifter on September 3, 2010 to clarify whether he provided them with inaccurate information or if they had complained about Scro’s poor performance. Green and Seifter’s auditor who was heading the work with the District, Mike Lisson, stated to Scro in unequivocal terms that Scro’s performance was not at issue, that the problem was with obtaining beginning fund balances from the Board, and that Green & Seifter had never made such complaints to the District.

17. On or about September 9, 2011, Scro called Marilyn Dominick to ask about his return to the District. At that time, Dominick said that she was unavailable because of the first day of school. The following day, Scro called Dominick’s office. Dominick stated that the Board had found out that he contacted Green & Seifter and they were not happy about it. She informed Scro that he was on paid administrative leave

until further notice and that “the Board would be discussing his employment at its meeting on September 15, 2011.

18. On the morning of September 16, 2011, Scro talked to Dominick by phone. She stated that “the Board decided at its meeting during executive session last night to terminate your employment.” She also stated that it was not for performance reasons, but because Scro had allegedly created “a hostile work environment.” Scro demanded a letter detailing the reasons for his termination.

19. Scro then received a letter from the District Superintendent Marilyn Dominick dated September 20, 2010, notifying him that they had determined to terminate his employment and it did not provide charges or a disciplinary hearing. It only said he was “terminated for multiple reasons.”

20. At a Board meeting held on October 6, 2010, the Board formally terminated Scro’s position and informed Scro he was terminated because he had failed to sign an oath-of-office form properly within 30 days; therefore, his office was deemed vacant.

21. Judge Donald Greenwood, for the New York State Supreme Court, determined on January 20, 2011 that Scro’s oath of office was timely filed because it had occurred within 30 days of the District Clerk providing him notice of his obligation to sign an oath of office. Therefore, Scro had properly taken office as a statutory officer of the District on July 1, 2010, and he cannot be removed from that term of employment except through petition to the Commissioner of Education. Judge Greenwood ordered the District to rehire Scro and to pay him back pay. However, instead of allowing Scro to

return to work, Miller filed a notice of appeal on January 27, 2011, effectively blocking Scro from returning.

22. The Board's attacks on Scro have not subsided, and in fact, they show a pattern of repeated defamation that has negatively affected Scro's reputation and ability to find employment in his professional field.

23. The defamatory statements against Scro began at the Board meeting held on October 6, 2010, where Connie Drake and Diana Foote made accusatory statements that Scro had a poor job performance. Their statements included stating that Scro missed things that a "treasurer should have known."

24. The defamatory statements continued at the October 20, 2010 Board meeting. During this meeting, Scro asked if the state had given the District permission to break the 4 percent rule. In response to his question, he was publically accused by Board members for not knowing what he was talking about and for being wrong. He later contacted the New York State Department, and they confirmed that there was nothing in writing allowing the District to break the 4 percent rule.

25. At the November 2, 2010 Board meeting, the Board announced Scro would not be allowed to speak at meetings. The Board also read the review of Scro's work performance, which had been written by VanMinos after only being his supervisor for two days. This ban against Scro's speech was later lifted after the crowd argued for his First Amendment rights.

26. The worst defamatory statements made against Scro by the Board occurred during March and April Budget presentations to the public at large. The District's hired a financial consultant to present on the proposed budget; however, they

also made a special presentation about cash flow. During the presentations, the Board and its agents, officers, and employees specifically and repeatedly claimed \$500,000 was missing from the capital fund project and inferred that Scro and/or William Hamilton either committed larceny or were incompetent. During this meeting, Scro said he accounted for the money, and the books must have been tampered with if they did not reflect the \$500,000. Various Board members in attendance, including upon information and belief, Connie Drake, Penny Feeny, and Diana Foote stood up and yelled repeatedly at Scro in front of dozens of community members present that “You don’t know what you are talking about” and, “The money is not there.” Interim Superintendent Zacher repeated these allegations in his presentations.

27. Following these aggressive defamatory statements made against Scro’s professional competency and integrity, and after the termination of VanMinos and Zacher’s employment, the District was forced to hire new and competent business officials. After a mere few days of reviewing the District’s records, Interim Business Official Joe Coleman noted that no money was missing and, later, that money was there but had been accounted for in the wrong account. In fact, the audit report and financial statements prepared by Green & Seifter confirm that the \$500,000 had been accounted for in two appropriate accounts. The “missing \$500,000” had been properly accounted for all along.

28. Scro submitted FOIL requests for the audit prepared by Green & Seifter, which would have proven the \$500,000 was accounted for the entire time of the Board’s accusatory statements. However, the Board ignored the FOIL requests and refused to

produce the documents until after the Board's election in May, 2011, which was months after the FOIL requests had been submitted.

29. The statements made by Board members and District employees have hampered Scro's job search. Scro's qualifications, certifications and experience should make him a top candidate for any job in his field. However, despite actively sending resumes to advertised positions and working with employment placement agency CNY Works, Scro has only had three job interviews since October 2010. During two out of his three interviews, the situation with Jordan-Elbridge was mentioned. In particular, during an interview with the Mayor of the Village of Minoa, the Mayor asked Scro two to three times about why he was not with Jordan-Elbridge. Despite the Mayor from Jordan and the Mayor from Elbridge calling the Village of Minoa with good references for Scro, he did not receive an employment offer.

30. It is also likely that, in response to Scro's application for employment with Cortland, someone from the District called Cortland regarding Scro. Cortland's response was that they were "not going to touch him" because of the Jordan-Elbridge situation.

31. The Board and the named individuals have made publically disparaging insinuations and remarks about Scro's job performance based upon patently false facts or deliberately reckless misstatements of facts, induced others to make false and reckless misstatements of fact, relayed patently false and reckless misstatements of facts to others to dissuade them from doing business with Scro or affiliating with him in any way.

32. The Board and the above-named individuals have done everything in their individual and collective power to destroy Scro's reputation and career in the field of public education, both within and without the Jordan-Elbridge school community.

**AS AND FOR A FIRST CAUSE OF ACTION FOR FIRST AMENDMENT
RETALIATION**

33. Plaintiff hereby incorporates all previous paragraphs as if fully set forth herein.

34. The Defendants, at all times relevant hereto, were state actors for purposes of 42 U.S.C. §1983.

35. Plaintiff is a citizen of the United States who has First Amendment rights to free speech protected pursuant to 42 U.S.C. §1983 and the United States Constitution.

36. Subsequent to the plaintiff's termination of his job with the Jordan-Elbridge Central School District he made and/or attempted to make public statements at open Board meetings related to financial activities he was associated with while he was employed by the Jordan-Elbridge Central School District. In response, Board members, specifically Diana Foote, Connie Drake and Penny L. Feeney, made public defamatory statements about the plaintiff.

37. The statements made by the defendants, individually and collectively, were made under color of State law and were made in retaliation for the plaintiff expressing his First Amendment rights to free speech. The statements were defamatory and directly and proximately caused damage to the plaintiff's good name in the community, have impacted his ability to obtain new employment and caused emotional and psychological harm.

38. As a result, Plaintiff has suffered damages including humiliation, emotional distress, mental anguish, and damage to his professional reputation. Plaintiff

seeks monetary damages pursuant to 42 U.S.C. §1983 and attorney's fees pursuant to 42 U.S.C. §1988, from defendant Board under the First Cause of Action.

**AS AND FOR A SECOND CAUSE OF ACTION
RETALIATION PURSUANT TO NEW YORK EDUCATIONAL LAW
SECTION 3028-d**

39. Plaintiff hereby incorporates all previous paragraphs as if fully set forth herein.

40. Before Plaintiff's termination from his job with the Jordan-Elbridge Central School District he made statements and reported what he believed were financial improprieties to various officials with the school district. In response, defendant Board terminated his position with the Jordan-Elbridge Central School District in violation of New York Education Law Section 3028-d

41. As a direct and proximate cause of defendant board's termination of plaintiff's position with the Jordan-Elbridge Central School District the plaintiff was caused to suffer lost income, mental and emotional anguish, and incur attorney fees.

42. Plaintiff seeks monetary damages from defendant Board for lost income, mental and emotional anguish, and attorney fees for unlawful retaliation under New York Education Law Section 3028-d.

**AS AND FOR A THIRD CAUSE OF ACTION
DEFAMATION**

43. Plaintiff hereby incorporates all previous paragraphs as if fully set forth herein.

44. Defendants, individually and collectively, made several defamatory statements at Board meetings, described in detail above, regarding the plaintiff that the defendants knew were false or were made with reckless disregard for the truth.

45. The above-referenced defamatory and slanderous statements were patently false and injured the reputation of the plaintiff through ridicule, hatred or contempt, causing him to lose the high esteem of the public, and injured him in his profession or trade. Said acts were done with actual malice towards the plaintiff, with utter and reckless disregard to their effect, and with a wrongful and willful intent to injure the plaintiff, his professional and personal reputation, his physical and emotional well-being, and to expose him to ridicule and contempt in the community.

46. The above actions by the defendants, individually and collectively, directly and proximately caused the plaintiff special harm including, but not limited to, monetary damages, damage to his reputation, humiliation, physical and emotional distress, mental anguish and impacted his ability to obtain new employment.

47. The plaintiff seeks monetary damages from all defendants for the defamatory and slanderous statements in an amount to be determined by the trier of fact.

PRAYER FOR RELIEF

48. Based on the foregoing, the plaintiff makes demand for damages based on violations of the plaintiff's First Amendment's rights to free speech, retaliation against the plaintiff in violation of the New York State Education Law and for the State tort claim for defamation and also any and all damages for personal and psychological injury, emotional distress, loss of reputation and Plaintiff's good name and attorney fees under

New York State law, as well as claims under Section 1983 of the Civil Rights Act of 1871, 42 U.S.C. §1983, for violation of Plaintiff's rights under color of state law, and attorney's fees under § 1988.

Dated: September 16, 2011

s/ Frank S. Gattuso
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