

2005 MILLION DOLLAR VERDICTS & SETTLEMENTS

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11. \$1.4M awarded for defamation *Counsel: Large verdict a 'vindication'*

The plaintiff, an assistant superintendent for the Troy School District, was involved in the termination of the defendant who had been employed by the district as a custodian/janitor for more than 15 years. The defendant's discharge was based on subordination and threatening acts. During the course of the defendant's discharge proceedings and subsequent related lawsuits, he was represented by the Michigan Education Association (MEA) and several attorneys. Despite vigorously contesting his firing, the matter was ultimately resolved against the defendant by a federal appeals court.

Prior to his termination, the defendant had written untruthful letters about the plaintiff and emailed them to hundreds of individuals and entities, including school board members, police departments, mayors, city council members and various news agencies such as the Detroit News and the Detroit Free Press. The defendant also sent

letters to the Attorney General for the State of Michigan, the Michigan Education Association (MEA), and local, state and national labor organizations.

In his letters about the plaintiff, the defendant called her a lunatic, mentally ill, vengeance-seeking and a criminal.

The plaintiff requested a retraction from the defendant but he refused, contending he was exercising his First Amendment right to free speech.

Plaintiff's counsel said that, as the defendant continued to issue his statements about the plaintiff, they became so threatening, frightening, and abusive that the plaintiff successfully sought a personal protection order (PPO). The defendant hired new counsel and challenged the PPO in Oakland County Circuit Court and the Court of Appeals. His application for leave to appeal to the Michigan Supreme Court was denied.

Through discovery, it was determined that

the defendant's statements about the plaintiff were false. As such, the issue of liability was resolved by way of a summary disposition motion. The only issue left for the jury to decide was damages.

The jury trial resulted in a \$1.2 million verdict. A motion for mediation sanctions was filed and a final judgment of \$1.4 million was entered by the court.

According to plaintiff's counsel, even though the law does not provide a means of forcing the defendant to retract his statements, the jury's substantial verdict serves the dual purposes of compensating the plaintiff for having to deal with the defendant's defamatory statements and vindicating the plaintiff in the eyes of anyone who might have received the defendant's defamatory statements.

Plaintiff's counsel also noted that, in light of the defendant's insistence that his speech was protected by the First Amendment, it

was important to educate the jury through examples that if a person intentionally publishes untruthful statements about an individual, then the defamed individual has a right to a retraction and damages.

Type of action: Defamation using the Internet; First Amendment right to free speech

Type of injuries: Noneconomic; employment reputation; emotional distress; humiliation; mortification; embarrassment; sleeplessness; anxiety; punitive damages

Name of case: Kelly v. Farhat

Court/case no./date: Oakland County Circuit Court; #02-043199-NO; March 17, 2005

Name of judge: Fred M. Mester

Verdict amount: \$1.4 million

Allocation of fault: 100 percent (as to defendant)

Attorney for the plaintiff: James O. Elliott

Attorney for the defendant: Withheld

Insurance carrier(s): Allstate Insurance Co. (allowed out on a declaratory action)