

How Riker Danzig Won Newark BOE Whistleblower's Appeal

By Nick Muscavage

Law360 (April 9, 2021, 3:03 PM EDT) -- A team of attorneys at Riker Danzig Scherer Hyland & Perretti LLP recently beat whistleblower claims on behalf of New Jersey's most populated school district in an appeal brought by a teacher alleging she was wrongfully terminated.

The team — which included Riker Danzig partners Marc D'Angiolillo and Stephanie D. Edelson, as well as Brenda C. Liss, general counsel for the Newark board of education — represented the board in a whistleblower action that, after receiving a no-cause verdict from an Essex County jury, made its way to the appellate division.

The plaintiff, Dalila Czuckerberg, attempted to appeal the verdict by making 14 claims of error in evidentiary decisions and jury charges. The appellate panel, however, rejected Czuckerberg's claims in a March 26 opinion, finding that the trial judge properly instructed the jury on the whistleblower claims.

Czuckerberg was hired by the district in 2012 and most recently worked as a chemistry teacher at University High School before being terminated in 2014, according to court documents.

In her lawsuit, she contended her troubles began with the Newark board of education when she refused to change the grades on a summer assignment after she said she was instructed by her superior to do so, which she believes led to her eventual termination and subsequent whistleblower claims under the state's Conscientious Employee Protection Act, or CEPA.

The appellate panel, however, found that Czuckerberg failed to testify that she considered the "request to remove the summer assignment grades in and of itself to be illegal, criminal, or contrary to the public health, safety, welfare, or the environment, nor do the surrounding circumstances imply that she believed that at the time," according to the opinion.

Liss said she is pleased with the panel's opinion but believes that the case should have never made it to the appellate division to begin with.



Marc D'Angiolillo



Stephanie D. Edelson



Brenda Liss

"We had a cross appeal saying that the case should have never went to trial in the first place," she told Law360 Pulse by phone on Friday. The cross appeal sought a reversal of the trial court's, the denial of the board's motion for summary judgment, but it was dismissed by the panel in its March 26 opinion.

Liss, who was a Riker Danzig partner working on the Czuckerberg case before becoming the board of education's general counsel, said the amount of work that went into the case, which was filed in 2015, was substantial.

"It was extensive because the plaintiff raised so many issues that were rejected all along the way, first by the trial court in our pre-trial motions and then at the trial," she said, adding that all 14 points raised by Czuckerberg on appeal were rejected. "The plaintiff raised so many issues found not to be meritorious, it caused so much work to have to be done at taxpayer expense on behalf of the board, all for a case that we believe had no merit to begin with."

Edelson echoed Liss, and said the appellate opinion was "the product of years of litigation."

"On motions for summary judgment filed in 2017 and 2018, the court dismissed plaintiff's claims of wrongful termination, violation of her First Amendment rights, intentional infliction of emotional distress, negligent infliction of emotional distress, defamation, and breach of the covenant of good faith and fair dealing, leaving only her CEPA claim," Edelson told Law360 Pulse in an email on Wednesday.

In addition to D'Angiolillo and Liss, Riker Danzig counsel Teresa Moore, associate Fiona Cousland, and paralegals Joyce Cohn and Amy Redner assisted on pre-trial motions, at trial and on the appeal, Edelson said.

D'Angiolillo said that in order to convince the appellate panel, the team emphasized that the intent of CEPA is to protect employees from retaliation for disclosing violations of law or public policy by employers.

"The CEPA statute is not, however, a vehicle by which disgruntled employees may pursue claims against employers for any adverse employment actions taken by employers against employees," he told Law360 Pulse by email on Wednesday. "Here, in terminating plaintiff's employment, the Newark board of education and its administration were not retaliating against her, but rather enforcing the Newark board of education's uniform grading policy that grades must be representative of students' performance in the classroom, and cannot be used to discipline or punish students."

To convey this point, D'Angiolillo and the team of attorneys presented the appellate panel with evidence from the record showing that Czuckerberg was terminated for her "unacceptably poor performance as a teacher, and for improperly using her grades to discipline and punish her students," he said.

"We argued, and the appellate panel agreed, that the conduct on which plaintiff requested a jury instruction could not as a matter of fact or law constitute an act of 'whistleblowing' under the CEPA statute," he said, "and that the trial court correctly and properly narrowed the issues presented to the jury through its jury instructions."

Counsel for Czuckerberg was not immediately available for comment Friday.

D'Angiolillo believes the decision has "significant legal and public policy ramifications for the Newark board of education, and for school districts throughout the state of New Jersey."

"First, it completely validates the actions undertaken by the Newark board of education and its administration in terminating plaintiff's employment," he said. "Second, it closes a potentially dangerous Pandora's box of future litigation by discouraging terminated teachers from filing claims for retaliation when school administrators take actions to remediate a teacher's ineffective methods and otherwise protect students' rights to the high quality education they all deserve."

Liss agreed and said that she believes the appellate panel "got it right," but is hoping Czuckerberg does not attempt to take the case to the New Jersey Supreme Court.

"It really was a slam dunk for the board and we certainly hope that the appellant does not file a petition for certification," Liss said. "They still have that opportunity, but I can't imagine the [state] Supreme Court would grant any such petition because none of these issues are the kinds of things the Supreme Court needs to be involved with. They never should have been anything the appellate division needed to be bothered with."

Judges Mary Gibbons Whipple, Lisa Rose and Lisa A. Firko sat on the panel for the Appellate Division.

Arguing for Czuckerberg was Keith N. Biebelberg of Biebelberg & Martin.

Arguing for the Newark board of education was Brenda C. Liss and Marc D'Angiolillo and Stephanie D. Edelson of Riker Danzig Scherer Hyland & Perretti LLP.

The case is Dalila Czuckerberg v. State-Operated School District of the City of Newark, case number A-4955-18, in the Superior Court of New Jersey, Appellate Division.

--Editing by Alyssa Miller.