

S A N F R A N C I S C O C O U N T Y

EMPLOYMENT**Retaliation — Employment — Wrongful Termination****Property manager claimed he was fired for OSHA complaint****SETTLEMENT** **\$800,000****CASE** Michael Reznitsky v. 1980 Vallejo Home Owners Association, No. 449324**COURT** Superior Court of San Francisco County, San Francisco, CA**NEUTRAL(S)** Rebecca J. Westerfield
DATE 4/20/2007**PLAINTIFF**
ATTORNEY(S) Aaron P. Minnis, Mattingly & Minnis LLP, San Francisco, CA**DEFENSE**
ATTORNEY(S) Michael P. Terrizzi, Plastiras & Terrizzi, San Rafael, CA

FACTS & ALLEGATIONS In May 2004, plaintiff Michael Reznitsky, a resident manager in his 60s, filed a complaint with Cal-OSHA regarding his safety concerns about his window cleaning duties at the Pacific Heights condominium complex where he was both an employee and a resident. In September 2005, Reznitsky was subsequently terminated from his position by the Homeowner's Association at 1980 Vallejo Street. The termination forced him to find a new place of residence, as a portion of his compensation was the unit that the homeowner's association provided him.

Claiming that his termination served as an act of retaliation for filing the OSHA complaint, Reznitsky sued the Homeowner's Association at 1980 Vallejo for wrongful termination. Reznitsky also filed another claim against the homeowner's association for failing to pay him the minimum wage and the required overtime rate for the additional work that he performed for the association during the 13 years that he worked there.

Plaintiff's counsel argued that the homeowner's association directed Reznitsky to clean exterior windows of an eleven story building by leaning out of the building and standing on the fire escape. Counsel contended that Reznitsky told his employers that he was scared of heights and that he felt unsafe performing the tasks without the necessary safety equipment. Counsel further asserted that Reznitsky provided the association a doctor's note detailing his fear of heights in order to exemplify his concerns about the duties.

In addition to the OSHA claim, counsel argued that Reznitsky had worked several hours of uncompensated overtime.

Counsel for the defense denied that it was liable for overtime wages because Reznitsky had never reported the hours to the homeowner's association. Counsel also contended that Reznitsky was terminated a-year-and-a-half after he made the OSHA claim and that the homeowner's association had complied with his complaints by removing the window cleaning from his list of duties.

Counsel contended that Reznitsky was fired because numerous tenants had complained about his availability, poor attitude and workmanship.

Plaintiff's counsel responded by providing the defense with statements from a homeowner on the board of directors who claimed that it was her understanding that the decision to terminate Reznitsky was made after the association had found out about his OSHA claim. According to plaintiff's counsel, the board member recalled that the association agreed to wait at least a year to terminate Reznitsky so that it wouldn't be clear that the decision to fire him was retaliatory.

INJURIES/DAMAGES Plaintiff's counsel argued that Reznitsky could have continued to perform the resident manager tasks for at least another ten years and counsel sought to recover his past and future lost wages. Counsel also claimed that Reznitsky should be able to recover the value of the residence that he would have continued to live in had he not been terminated from his position as resident manager. Counsel further contended that Reznitsky should recover monetary damages commensurate with the rental unit that Reznitsky was forced to vacate. Lastly, counsel argued that Reznitsky suffered from depression after losing his job and home. Counsel sought to recover unspecified damages for past and future pain and suffering.

Counsel for the defense denied that the association as liable for any damages that Reznitsky claimed because it had proper grounds to terminate him. Counsel added that the decision to terminate Reznitsky was primarily financial and that Reznitsky was not replaced by another resident manager but, rather, an outside agency.

RESULT The parties agreed to a settlement whereby the homeowner's association paid Reznitsky \$800,000.

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

—Joshua Couzens