

SIERRA COMMUNITY COLLEGE DISTRICT SECRET SETTLEMENT OF GENDER DISCRIMINATION LAWSUIT COMPLAINT 98B-32

Summary

The Grand Jury received a complaint regarding operations at Sierra Community College District located at Rocklin, Nevada City and several other sites. That complaint, concerning over twenty issues, is currently being investigated and a Final Report outlining those investigations will be issued at the conclusion of the 1999-2000 Grand Jury term.

One complaint, specifically that a lawsuit involving allegations of gender discrimination was settled for an undisclosed amount in January 1999, and that the settlement amount had been kept secret from the public without justification, is the subject of this early report by the Grand Jury. This complaint is reported at this time because of the timeliness of the subject matter and the seriousness with which the Grand Jury views secret settlement of lawsuits involving publicly supported governmental entities such as the Sierra Community College District.

The Grand Jury has made several recommendations at the conclusion of this report.

Discussion

Debra Ann Furtado was employed by Sierra Joint Community College District first as an assistant Dean of the Library, in July 1991, and then as a Faculty Librarian. In February 1995, the college's Board of Trustees voted not to renew Furtado's assistant Dean contract and reassigned Furtado to a first-year, non-tenured probationary Faculty Librarian position.

In June 1995, Furtado filed an Equal Employment Opportunity Commission/Department of Fair Employment and Housing (EEOC/DFEH) claim alleging gender discrimination against the college. Also in June 1995, Furtado presented a Government Tort Claim to the college alleging defamation against the College President and several named college employees.

On January 11, 1996, Furtado filed an action in the United States District Court, Eastern District of California (Complaint No. CIV S96-80 GEB/JFM) against the college and named administrators and employees.

In May 1996, Furtado filed an EEOC/DFEH Claim alleging that the college had retaliated against her because she had filed a gender discrimination claim and a civil lawsuit.

On November 26, 1996, Furtado filed a second action in the United States District Court, Eastern District of California (Complaints No. CIV S96-2048 GEB/JFM) against the college, the President, named employees, Unum Disability Insurance (a Worker's Compensation carrier) and all seven members of the Board of Trustees in their individual capacities.

In February 1997, the college's Board of Trustees voted not to renew Furtado's Faculty Librarian position. Thereafter, Furtado's employment with the college ended.

On May 19, 1997, the District Court consolidated the two matters and directed that the case thereafter be identified administratively as complaint No. CIV S96-80 GEB/JFM. Furtado dismissed her claims against several college employees, Unum Disability Insurance, and all seven members of the Board of Trustees in their individual capacities. In February 1998, Furtado filed a first amended complaint. Thereafter, Furtado dismissed her claims against two additional college employees leaving the college President and one named employee as defendants.

In January 1999, Furtado, the California Insurance Company (Coregis), insurer of Sierra College, the President of Sierra College and one remaining defendant employee entered into a Settlement Agreement and Release. The California Insurance Company (Coregis) agreed to pay to Furtado "the amount of one dollar and additional valuable consideration known to and acknowledged by the parties for a complete settlement of all claims."

The claims released by Furtado included claims for discrimination, wrongful termination, constructive discharge, breach of contract, breach of the covenant of good faith and fair dealing, breach of fiduciary duty, fraud, denial of constitutional rights, defamation, libel, invasion of privacy and intentional or negligent infliction of emotional distress. Further claims released by Furtado include claims under Federal, state or local laws prohibiting employment discrimination and claims under state and Federal labor statutes and regulations, including but not limited to the California Fair Employment and Housing Act, the California Labor Code, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1871, as amended (42 USC Secs. 1983 et. seq. and 1985 et. seq.) and the Fair Labor Standards Act as well as all other claims known or unknown by Furtado.

The parties to the agreement further agreed that neither party admitted liability. A further provision stated: "The terms and provisions of this agreement shall be kept confidential and private between the parties to this agreement and their attorneys, except to the extent disclosure is required by law. Therefore, Furtado, her attorneys and other agents agree not to disclose or cause disclosure of the monetary or other terms of settlement other than required by law or as necessary for the preparation of income tax returns and other tax related matters. Any such disclosure shall be considered a breach of this agreement resulting in damage to the other parties.

Any party who willfully or negligently violates this confidentiality provision shall pay to any party damaged by the breach of confidentiality all sums proximately caused by the breach, including reasonable attorney's fees, costs and liquidated damages in the amount of \$100,000."

A former reporter for the Auburn Journal filed a petition for a Writ of Mandate in Placer County Superior Court following the aforementioned settlement of January 1999. He sought information regarding the actual dollar value of the settlement on the grounds that the actual dollar amount was subject to disclosure under provisions of the Public Records Act and several supporting California cases. On July 13, 1999, Judge Frances Kearney in a tentative ruling stated "The petition is granted as to the settlement agreement. A Writ of Mandate shall issue requiring the District to provide the petitioner with a copy of the Furtado settlement agreement. The fact that the settlement was entered into by the District's insurance carrier does not preclude it from being a public record subject to disclosure under the Public Records Act."

Thereafter the college provided a copy of the aforementioned "\$1.00 and additional valuable consideration" agreement with the confidentiality clause. The reporter was told that the college had no knowledge of the "other consideration" mentioned in the \$1.00 agreement.

The Grand Jury served a subpoena on the college and its President for various documents including a copy of the settlement agreement in the Furtado lawsuits. The college responded by providing a copy of the selfsame "\$1.00 and additional valuable consideration" document.

The attorney representing the college President drafted that agreement containing the confidentiality clause.

Following production of that document, all members of the college Board of Trustees were interviewed under oath. All denied knowledge of the details of the "other consideration" mentioned in the agreement. Several Board members told the Grand Jury that a three-person committee of the Board was appointed in late May 1998 to meet with the attorneys for the District to discuss and make decisions regarding the settlement of the Furtado lawsuit. There is no indication that these three members ever did make any decisions nor is there any record that they ever reported their discussions to the full Board of Trustees. There is evidence that one member was made aware of the settlement terms of the Furtado litigation but, as stated above, that information was never shared with the full Board of Trustees.

The Grand Jury discovered that the Furtado lawsuit was settled for a \$300,000 cash payment and a \$250,000 annuity payable to Furtado over a five year period at the rate of \$55,347.62 per year.

There is no evidence that the Board of Trustees, the governing Board of the college, ever, in formal session, either openly or in executive session, voted upon, signed, ratified, or approved the settlement of the multimillion dollar lawsuit filed by employee Debra Furtado.

The Grand Jury was advised by an attorney with 28 years of experience in labor law that “secret settlements” are extremely rare when a public, tax-supported entity is involved in the lawsuit. Settlements of the size of the settlement in this case cannot be called a “nuisance settlement.”

The Grand Jury also reviewed provisions of the California Code of Professional Conduct for attorneys. That Code states that attorneys must inform their clients of significant issues in the conduct of their cases as well as the terms and conditions of any settlement offer. The decision to accept or reject a settlement offer lies with the client.

The Grand Jury noted the contents of a news article in the Neighbors section of the Sacramento Bee dated November 25, 1999, entitled “Sierra: We don’t have details of suit we settled.” That story quoted George Holt, attorney for Sierra College, “We can’t give what we don’t have.” “No one at the district knows how much that case was settled for.”

Finding 1

The lawsuits filed by Debra Furtado against Sierra College, its President and the other named employees was settled for a payment of \$300,000 cash and a \$250,000 annuity payable to Furtado over a five year period at the rate of \$55,347.62 per year.

Finding 2

At the time of the signing of the settlement agreement stating a payment of “\$1.00 and additional valuable consideration” all defendants except the college President, one employee of the college, and the college itself had been dismissed as defendants in the case.

Finding 3

The defendants, the college President, the college employee and the college were each represented by separate law firms throughout the litigation process.

Finding 4

The attorney representing the college President drafted the Settlement Agreement stating a payment of "\$1.00 and additional valuable consideration" as well as the confidentiality clause with penalties of \$100,000 for revealing the actual settlement amount.

Finding 5

The settlement amount of \$550,000 was substantial for an employment case of this type and could not be called a "nuisance" settlement.

Finding 6

The attorney for the college denies in a news article dated 11/25/99 that his clients, the college administration, employees and Board of Trustees have knowledge of the true settlement amount of the Furtado lawsuits.

Finding 7

At least one member of the Sierra College Board of Trustees was notified by legal counsel for the Board of Trustees that the lawsuits had been settled and revealed the dollar amount of that settlement.

Finding 8

Testimony from Sierra College Board of Trustees members revealed that the majority of the Board was informed of the settlement of the Furtado lawsuit only when they read about it in the newspapers.

Finding 9

The settlement of the lawsuits filed by Furtado in the U.S. District Court, Eastern District, was "contingent upon the approval by the Board of Supervisors {sic}" as stated by Garland Burrell, Jr., United States District Court Judge, by order dated 12/31/1998.

Finding 10

The Sierra College Board of Trustees, acting together as a governing body, was never told the actual amount of the settlement of the Furtado lawsuits nor did they ever vote, ratify, approve or sign any settlement document in their official capacity or any capacity at all.

Finding 11

The members of the Board of Trustees testified that they did not ask questions regarding the settlement because this matter was handled by the insurance company.

Recommendation 1

The practice of “confidential” settlements of lawsuits by a publicly supported institution is misleading to the public and unacceptable to the Grand Jury. Such confidential settlements erode public confidence in the integrity of its elected and appointed officials and could be perceived as a “cover up” whether or not an actual cover up is intended. The Grand Jury believes that Sierra College specifically and public institutions generally should not enter into “confidential” settlement agreements such as were utilized in the Furtado lawsuits.

Recommendation 2

The Sierra College Trustees are elected officials. As such, they have a responsibility to see to it that the institution is well managed. They are expected to set policy for governance of the college, its officials, employees, students and physical assets. To achieve these goals, they must receive information that is accurate and reliable. Such information may come from many sources, but principally it should come from college administrators. In the Furtado matter the Trustees were ill informed in that they had not received the details of the settlement. Despite that lack of knowledge, none of them, either individually or collectively, made any inquiries into the terms and conditions of the settlement of a multi-million dollar lawsuit that attacked the discriminatory personnel practices of the Sierra College administration. The Grand Jury believes that the Board of Trustees in their role of fiduciaries should never relinquish control over settlement of lawsuits as they did in the Furtado matter.

Recommendation 3

The Grand Jury believes that Sierra College is a fine educational institution that delivers a sound educational product for its students and that its employees who provide that instruction are dedicated professionals. It is unfortunate for the college and its employees that the matters addressed in this Grand Jury report were ever allowed to occur. The Grand Jury further believes that truth in the conduct of public affairs is essential and to that end recommends that the facts of the Furtado lawsuits and settlement be investigated and revealed to public scrutiny by the college Board of Trustees and administration as promptly as possible.

RESPONDENTS

Sierra College Board of Trustees

RESPONSE REQUIRED WITHIN 60 DAYS TO: *

The Honorable Larry D. Gaddis
Presiding Judge, Superior Court
County of Placer
Historic Courthouse
101 Maple Street
Auburn, CA 95603

*** Editors Note: Sierra Community College District's response immediately follows this report. No further response is required.**