

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

CYNTHIA M. FITZWATER,)
)
Plaintiff,)
)
v.)
)
REBECCA B. NEAL, Individually)
and in her capacity as Treasurer)
of the City of Harrisonburg,)
Serve at: 770 Chestnut Drive)
Harrisonburg, Virginia 22801)
)
Defendant.)
)

Case No. 0808-00416

A TRUE COPY

ATTESTE

Heather Leavelle
DEPUTY CLERK

COMPLAINT

The plaintiff, Cynthia M. Fitzwater, by counsel, complaining of the defendant, Rebecca B. Neal, individually and in her capacity as the Treasurer of the City of Harrisonburg, alleges and says as follows:

NATURE OF SUIT

1. This is a suit under the Virginia Fraud Against Taxpayers Act, Va. Code Ann. §8.01-216.1, *et seq.* for injunctive relief and to redress and remedy discrimination by the defendant Rebecca B. Neal ("Neal") against the plaintiff Cynthia M. Fitzwater ("Fitzwater"). Neal has discriminated, and is discriminating, against Fitzwater in the terms and conditions of Fitzwater's employment because Fitzwater has opposed conduct or practices by Rebecca Neal in violation of, and referenced in, Va. Code Ann. § 8.01-216.3 of the Virginia Fraud Against Taxpayers Act, and because Fitzwater has initiated, assisted or participated in an investigation or action covered by the Act.

Filed in the Clerk's Office the 28 day of April 2008
Writ Tax \$ 5.00 BR 4.00 Misc 1.00
Fee 50.00 Service 12.00 Misc 10.00
L.V. 4.00 Misc 5.00 Total 91.00
Heather Leavelle D.C.

PARTIES

2. The plaintiff Fitzwater is a citizen of the United States and a resident of Grottoes, Rockingham County, Virginia.

3. The defendant, Neal is a citizen of the United States and a resident of the City of Harrisonburg, Virginia. Neal is the Treasurer of the City of Harrisonburg, Virginia and has served in that capacity for approximately eleven years.

FACTS

4. Fitzwater has been employed by Neal for approximately seven years in the office of the Treasurer of the City of Harrisonburg, Virginia. Fitzwater is a sworn officer, and until recently has served as the Assistant Treasurer, also referred to as the Chief Deputy Treasurer. In February 2005, in addition to other duties as Assistant Treasurer and the Chief Deputy Treasurer, Neal added supervisory responsibilities over the office staff to Fitzwater's duties, which addition constituted a promotion.

5. During her employment, Fitzwater has performed the duties of her job well, and has met all legitimate expectations of the positions she has held in the Office of the Treasurer. She has received periodic increases in salary, and until the unlawful conduct by the defendant Neal alleged herein occurred, Fitzwater had received consistently good evaluations by the defendant Neal.

6. In 2005 and 2006, Neal nominated Fitzwater for Deputy Treasurer of the year, an award given by the Treasurer's Association of Virginia, reflecting Neal's opinion of Fitzwater's good performance.

7. Fitzwater regularly performed the bank statement reconciliations in the Office of the Treasurer. In connection with this job duty, Fitzwater had access to information other employees of the Treasurer's Office did not.

8. In November 2007, while performing the required duties of her position in connection with a bank statement reconciliation, the plaintiff Fitzwater made a discovery which led to the indictment in February 2008 of the defendant Neal on multiple felony and misdemeanor counts.

9. Normally, in the case in which a bad check has been submitted to the City, the City's bank will return to the Treasurer's Office a notice containing information regarding the check and a copy of the bad check. In reconciling the bank statement in November 2007, Fitzwater reviewed a bank notice referencing bad checks. She also reviewed a deposit slip referencing amounts deposited which apparently had paid those bad checks. The deposit slip contained a date and amount, indicating that the two bad checks had been made good at the same time. There were no copies of the bad checks included with the notice she reviewed in November.

10. The normal practice when a bad check is returned by the bank is for a deputy clerk to document what the payment was for, and when the customer makes the check good, the clerk writes up a deposit slip. The records would include a deposit slip referring to the maker of the check, along with a copy of the check.

11. In the situation confronted by Fitzwater in November 2007, the date and amount on the deposit slip for making the bad checks good were in Neal's handwriting.

12. Fitzwater recalled other times when she had seen Neal's handwriting on a deposit. When Fitzwater had questioned Neal on those occasions, Neal had responded

that it was a meals tax customer, or would write a note to that effect. Neal was responsible for pursuing delinquent meals tax accounts for the City, so this was a rational explanation for her having prepared a deposit slip in her own handwriting. As a result, Fitzwater had not further pursued those occasions, trusting that she had been given accurate information by Neal.

13. Because Neal was not in the office in November 2007 when Fitzwater was working on the bank statement reconciliation, and because there were no copies of the two bad checks included with the notice from the bank, Fitzwater went to investigate the situation at the office of the assistant finance director for the City of Harrisonburg in order to determine who had written the bad checks. The City finance office has access through on-line banking to copies of the checks which have been deposited into the City accounts.

14. The City's assistant finance director was able to pull up the two bad checks on the on-line account. Both checks were written on the personal account of the defendant Neal and her husband, Benny Neal.

15. Both of these checks had been made payable to the City of Harrisonburg. One check was included in the deposit along with payments for water bills, and the other check was included in the deposit along with payments in connection with the golf course. Both of the Neal checks had been refused by the bank due to insufficient funds in the Neal account.

16. The copy of the deposit slips on record in the Treasurer's Office did not include the Neal checks, but reflected that the amount of cash included in the deposits with the bank equaled the amount of the Neal checks obtained from the on-line account.

17. Neal had entered the vault, taken cash from the finalized and sealed deposits (for deposit with the bank the next morning), and had replaced the cash with checks which proved to be drawn on insufficient funds.

18. Neal then had replaced those bad checks at a later date with other personal checks or cash.

19. Neal's conduct uncovered by Fitzwater allowed Neal the unlawful personal use of money owned by the City of Harrisonburg from the time Neal took the money from the sealed deposits until her bad checks were made good.

20. The amount of money at issue in the November 2007 statement was approximately \$1,500.

21. Fitzwater's investigation of Neal's conduct uncovered a pattern in which Neal replaced the City's cash with personal checks drawn on multiple accounts, a number of which checks were drawn on insufficient funds and were returned by the bank; Neal then made the bad checks good at the end of the month, thereby allowing no outstanding bad checks to appear on the reconciliation statement.

22. Neal also disguised situations involving bad checks, including attaching a note to one deposit referencing "M.T." which meant meals tax. The note indicated that another company was in crisis. In fact, the problem stemmed from Neal's bad checks, which she later made good, but she benefited from the float.

23. In order to disguise the substitution of the Neal checks for cash, Neal altered the original white deposit ticket with white-out tape to show the correct currency and check amounts for the deposit, which differed from the completed deposit before money was taken by Neal from the completed deposit.

24. Fitzwater provided information which led to the investigation of the Treasurer's Office by the City, the Harrisonburg Police Department and the Attorney General's office. Fitzwater provided truthful information regarding Neal's conduct to these law enforcement authorities.

25. Ultimately, the information provided by Fitzwater resulted in the execution of a search warrant and a raid on the Treasurer's Office on January 22, 2008. At the time of the raid, officers from the Harrisonburg Police Department and a representative of the office of the Attorney General, went to the Treasurer's office and pursuant to a validly issued search warrant, took numerous items, including the defendant Neal's office computer.

26. The police also executed a search warrant on the defendant Neal's home on the same day.

27. In connection with the application to the Court for the search warrant on the Treasurer's Office, the following facts were set out by Investigator Terry Warlitner constituting and accepted by Judge James V. Lane as probable cause for the search:

Rebecca B. Neal is the Treasurer of the City of Harrisonburg, Virginia. Her office is located on the first floor of the City Municipal Building located at 345 South Main Street. A review of deposits from her office revealed that from January 15, 2004 through January 11, 2008, she removed thousands of dollars from various intact city department deposits and wrote personal checks to replace the amount of cash removed from said deposits for her personal benefit. The preexistent deposit slip was altered to reflect the variance in the deposit. On several occasions, her personal check was returned with insufficient funds and then later repaid. Several personal banking accounts were utilized to conduct said transactions. Sergeant Bill Frank of the Harrisonburg Police Department conducted the review of said deposits by accessing the electronic bank account of the City of Harrisonburg.

28. On the day of the execution of the search warrants, an investigator with the Harrisonburg Police Department, and an investigator with the Attorney General's office first met with the defendant Neal. After meeting with Neal, a number of additional law enforcement officers entered the Treasurer's Office. The employees were required to leave the Office, and later were interviewed by law enforcement officers. The plaintiff Fitzwater was called to assist with locating various items on the list included on the search warrant. Fitzwater was the only employee of the Office involved in assisting with the execution of the search warrant. This fact was known to the defendant Neal.

29. After the execution of the search warrant, Neal returned to the office to address her staff. Neal began by describing to the staff that she and her husband had experienced financial trouble for numerous years. Neal also indicated that she thought she knew why the search had taken place, and she explained that she had written checks to the City and had taken out cash from the deposits. She also stated that she had taken cash out of sealed deposits in the vault and that she knew that was wrong. She made a reference to bad checks, but noted that she had repaid them. She also admitted to the staff that she had changed the deposit slips to make the deposit correctly identify her checks and the replaced cash. She then stated that she did not see that she had done anything wrong other than taking the money out of the sealed deposits.

30. Part of the evidence taken by the law enforcement officers was an original deposit slip and two checks from that deposit drawn on Neal's account amounting to approximately \$1,000. Neal was aware that Fitzwater had seen this evidence and assisted the law enforcement with obtaining it as evidence from the sealed deposit bag which was set to be deposited that day.

31. Beginning the day after the execution of the search warrant, Neal changed her attitude and behavior towards Fitzwater. She was cold towards and did not speak to Fitzwater.

32. On January 28, 2008, less than one week after the search warrant was executed indicating that the charges being investigated included misuse of public funds, and without valid or just cause, Neal removed Fitzwater's supervisory duties and reduced Fitzwater's salary by 5%. In addition and among other things, Neal moved Fitzwater out of her office, and located her at a small table in an area of the office which made it physically difficult for Fitzwater to do the duties of her job. Neal also required Fitzwater to surrender her keys to the building. Only new, probationary employees did not have keys to the Treasurer's Office.

33. Fitzwater complained that this conduct by Neal was retaliatory, to no avail.

34. Neal advised that she would take over the posting duties and the reporting to the City Council, duties Fitzwater had handled for years. Almost immediately upon resuming those duties, Neal had to obtain Fitzwater's assistance to complete them. Neal failed to meet City filing requirements in March 2008.

35. On or around January 31, 2008, Fitzwater learned from a co-worker that a blogspot on the internet maintained by a local farmer who had run unsuccessfully for Clerk of Court against the plaintiff and Benny Neal, among eight others, made reference, in following up on the execution of the search warrants, to a grand jury convening on February 19 and to the demotion of Cindy Fitzwater in the Treasurer's Office.

36. The posting on the blog created the false implication that Fitzwater was a guilty party.

37. Fitzwater was extremely upset at the false implications created by the farmer's blog, and decided to attempt to rectify the situation by asking the farmer to remove her name.

38. On the evening of January 31, 2008, Fitzwater and her family drove to meet the farmer at his farm outside of Dayton, Virginia after having made the request by phone. After the meeting, the farmer agreed to remove the posting which included her name. Within minutes of the Fitzwaters pulling up to meet with the farmer, Neal and her husband drove up demanding to see documents presented to the farmer. Fitzwater explained to Neal that she had provided no documents relating to the investigation of the Treasurer's Office. The farmer confirmed that Fitzwater had wanted a reference to her removed from his blog.

39. Fitzwater has provided information relating to Neal's criminal conduct only to the law enforcement authorities or to the City finance department in connection with the investigation of that matter as requested by the authorities.

40. That night, Benny Neal left a long and intimidating message on Fitzwater's voice mail. Among other things, Benny Neal, in sarcastic manner, accused Fitzwater of being a liar, which assertion by Mr. Neal was wholly false.

41. On February 1, 2008, Neal presented Fitzwater with a "questionnaire" which included an inquiry about whether Fitzwater was "responsible for the "tip" that led to this investigation?" A true copy of the questionnaire is attached hereto marked Exhibit 1. Fitzwater immediately went to the City human resources department, spoke with the

City Manager, and then told Neal that she would need to seek counsel concerning the questionnaire.

42. Neal and her husband drove by Fitzwater's house in Grottoes over that weekend on at least two occasions.

43. Fitzwater was intimidated and scared. She feared further retaliatory conduct, knowing that Neal was aware that she was the only person in the office who had access to all of the information necessary to uncover Neal's criminal scheme.

44. Fitzwater responded to the questionnaire on February 8, 2008. A true copy of the response is attached hereto marked Exhibit 2.

45. Since February 8, 2008, Neal has continued her pattern of retaliation and discrimination by removing further duties from Fitzwater, and making false accusations against Fitzwater, without just or valid cause. Among other things, she has required Fitzwater to relinquish duties, and to train other employees in those duties without those other employees having the background training required by the Department of Taxation. Neal also has changed procedures in the Office, but has not advised Fitzwater of the changes, even though Neal has represented that she now is the supervisor of the staff.

46. Neal has continued her course of conduct by refusing to reinstate Fitzwater to her rightful position, by announcing in a letter to City Council that another employee has been elevated to Fitzwater's job as Chief Deputy Treasurer, and by continuing to require that Fitzwater perform duties performed in the past by part-time employees hired seasonally.

