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NYDOC pays \$1.8M to resolve bias claim

By **MATT CHANDLER**

BuffaloLaw Journal



Lisa Borello with her attorney, Lipsitz Green Scime Cambria LLP partner Rob Boreanaz, and some of the paperwork that changed hands during her nine-year lawsuit against the state Department of Corrections.

A nine-year legal battle between a former cook at the Lakeview Shock Incarceration Facility and the New York State Department of Corrections has come to an end.

Lisa Borrello filed suit Feb. 25, 2000, alleging job discrimination and harassment arising from her work in the kitchen at the minimum-security Brocton facility.

Borrello settled her lawsuit with the NYSDOC last month, receiving \$140,000 in back pay and an additional \$534,000 in damages. The NYSDOC also agreed to pay more than \$1.1 million to cover her legal fees.

Borrello's attorney, Lipsitz Green Scime Cambria LLP senior partner Rob Boreanaz, said he believes the settlement, totalling \$1.79 million, is the largest ever entered into by the state Department of Corrections.

He said the lawsuit was grounded in claims of discrimination Borrello faced at the hands of her fellow cooks, as well as negligence on the part of Ronald Moscicki, superintendent of the facility where Borrello worked, for failing to take action to protect his client.

"The supervisor (at Lakeview), Brian McKenna, had a problem with women being promoted," he said. "He began to criticize and sabotage the plaintiff's work so that she would look bad and was disfavored for a promotion." He said Borrello's lawsuit was the last straw, filed only after she had "complained up the chain of command."

"The superintendent ... didn't take responsibility for what was going on," Boreanaz said. "There is no doubt in my mind he could have stopped the problems and eliminated the protracted litigation years ago."

Calls to Superintendent Moscicki seeking comment were returned by Erik Kriss, spokesman for the DOC, who said, "We agreed (on the settlement), and it's over."

Asked if the case spawned any policy changes within the DOC, Kriss said the department is constantly taking steps to improve the work environment within its facilities.

"Each year, Commissioner (Brian) Fischer selects a topic for training of

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staff, and this year the topic is avoiding discrimination, harassment and retaliation,” Kriss said. “The idea is to raise everyone’s awareness that we have a zero tolerance for this and it is against the law.”

Borrello said through Boreanaz that she did not wish to comment on the settlement.

The attorney said he hopes the settlement resonates beyond the walls of Lakeview. “I would hope that the message a settlement like this sends, to public employers especially, is to spend more time addressing legitimate complaints early on and avoid these situations,” Boreanaz said.

Matthew Van Vessem, a partner at Jaeckle Fleischmann & Mugel LLP who was not involved in Borrello’s case, said being involved in a case for nearly 10 years can be detrimental to both parties.

“It seems to me the longer a case drags on, the greater the likelihood you reach these large settlement numbers,” he said, noting the risk that witnesses might forget what happened and that cases will get weaker with the passage of time.

“The message for lawyers is not to be waiting for a case to be resolved,” he said, “but to be aggressively pursuing it, the best you can.”

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