

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY

DONALD GENASCI, an individual,

Case No.

Plaintiff,

COMPLAINT

(Age Discrimination and Retaliation under
ORS chapter 659A)

v.

UNIVERSITY OF OREGON; and
CHRISTOPH LINDNER, individually,

Claims Not Subject to Mandatory
Arbitration

Defendants.

Demand: \$1,210,000
Fee Authority: ORS 21.160(1)(d) \$834

JURY TRIAL REQUESTED

NATURE OF THE ACTION

1.

This is an action for age discrimination and retaliation under ORS 659A.030, ORS 659A.199, ORS 659A.203, and ORS 659A.230.

2.

The employment practices described herein are alleged to have been committed in Multnomah County Oregon.

PARTIES

3.

Plaintiff DONALD GENASCI , whose year of birth is 1938, is a long-time resident of Multnomah County. Until he was forced to resign on January 1, 2018, Professor Genasci was employed by defendant University of Oregon as a Professor of Architecture for the University's Portland location in Multnomah County. He was subject to administrative direction by defendant Christof Lindner.

4.

Defendant UNIVERSITY OF OREGON ("University") is and was at all material times an Oregon public entity authorized to do business and doing business in Multnomah County, Oregon, and is plaintiff's employer. At its Portland location, the University offers various degree programs within the School of Architecture & Environment.

5.

University describes its School of Architecture & Environment as follows: "The School of Architecture & Environment is nationally recognized for its innovation and sustainability research including the design of buildings, interiors, landscapes and communities. We are committed to the principles of civic responsibility, environmental sustainability, international understanding, and interdisciplinary education. The School of Architecture & Environment is located on the University of Oregon campus in Eugene, and at the historic White Stag Block in Portland."

6.

Defendant CHRISTOPH LINDNER is an individual who at times material worked for University as its Dean of the School of Architecture and Allied Arts, now known as the College of Design, including the University's Portland facility. University selected Lindner as Dean effective July 1, 2016 with no previous experience as a Dean.

PROCEDURAL REQUIREMENTS

7.

Professor Genasci timely filed administrative complaints with the Oregon Bureau of Labor and Industries, Civil Rights Division, and with the Equal Employment Opportunity Commission in which he raised the statutory claims asserted herein.

8.

Professor Genasci provided timely Notice of Tort Claim pursuant to ORS 30.275 or, alternatively, commenced this action within 180 days of the alleged injuries.

9.

Professor Genasci has timely satisfied all administrative prerequisites, if any, to the filing of the statutory claims set forth in this complaint.

GENERAL ALLEGATIONS

10.

Professor Genasci helped found University's Portland Architecture program in the mid-1980s and served the University primarily in Portland through the date of his retirement on January 1, 2018. Over the course of his employment with University, the Portland Architecture

program developed into a nationally recognized graduate Sustainable/Urban Design program, with students coming from all over the United States and several foreign countries.

11.

Professor Genasci lived in Portland for over 24 years and was strongly involved in the Portland community.

12.

Professor Genasci has and continues to engage in professional activities in Portland, maintaining significant and strong relationships within the Portland area. Concurrently with and complementary to his service as a member of the Portland Architecture faculty, Professor Genasci acted as Principal in a Portland Architecture and Urban Design firm.

13.

Professor Genasci was an integral part of defendant University's Portland program, which is highly rated by the National Architectural Accrediting Board and internal University review. Professor Genasci serves on several local professional Boards, including the Northwest District Association (NWDA) Planning Committee, which vets and responds to most buildings being constructed in NW Portland. Professor Genasci has been invited to serve on the Post Office Site - North Broadway Steering Committee by the Portland Development Commission, an important area of future development in downtown Portland. This committee will help to set the architectural and social agenda for this twelve-block area at the end of the North Park Blocks.

14.

At all material times, Professor Genasci performed his job satisfactorily.

15.

On May 4, 2017, Professor Genasci and the two other oldest professors in the Portland program, Professor Hans Neis and Professor Warren Gerald Gast, with years of birth of 1947 and 1944, respectively, received notices from defendant Lindner that the three professors, including plaintiff, would be permanently “reassigned” to the University’s Eugene, Oregon campus, effective January 1, 2018.

16.

Together, Professors Genasci, Gast, and Neis were the three oldest faculty members employed with defendant University’s Portland program in 2017 and 2018. Due in large part to the three professors’ efforts over the past twenty-five or more years, the Portland Architecture program developed into a nationally recognized graduate Sustainable/Urban Design program, attracting students from all over the United States and several foreign countries.

17.

Defendant Lindner stated that the reassignment was motivated by his desire for “new blood” and that the program was “stale” and needed “new energy.” He also admitted that the “reassignment” had “nothing to do with budget.”

18.

The two other Portland faculty members, both under 60, were not given notices of transfer.

19.

On July 13, 2017, plaintiff filed an administrative complaint against Defendant University, alleging age discrimination.

20.

On October 6, 2017, Lindner's reassignment notice was overturned by the Provost for procedural reasons.

21.

In response to plaintiff's filing of an administrative complaint alleging age discrimination and the Provost's reversal of the reassignment, in early 2018, defendants created a process by which Lindner could selectively appoint decision makers and thereby guarantee that Professors Gast, Neis, and Genasci would not be selected to remain employed in their Portland positions. Defendant Lindner created and hand-picked a new committee, the "Portland Evaluation Committee," with few if any actual ties to Portland. The new "committee" worked to effectuate defendant Lindner's original transfer of the three oldest faculty members to Eugene.

DAMAGES ALLEGATIONS

22.

As a result of defendants' wrongful conduct, Professor Genasci had no reasonable alternative but to retire, which he did effective January 1, 2018.

23.

As a further result of defendants' wrongful conduct, Professor Genasci has suffered economic damages and is entitled to an award of his economic damages in an amount to be

determined at trial for past economic damages, including but not limited to the loss in income due to early retirement. Solely for purposes of ORCP 18B, plaintiff estimates and alleges his past economic damages to be \$110,000.

24.

As a further result of defendants' wrongful conduct, Professor Genasci will suffer future lost economic damages, and continuing damage to reputation and professional standing, for which he should be compensated by defendants in an amount to be determined at trial. Solely for purposes of ORCP 18B, plaintiff estimates and alleges his future economic damages to be \$350,000.

25.

As a further result of defendants' conduct alleged herein, Professor Genasci has suffered severe noneconomic damages, loss of research opportunities and research progress, and damage to reputation and professional standing for which he should be compensated by defendants in an amount to be determined at trial. Solely for purposes of ORCP 18B, plaintiff estimates and alleges his noneconomic damages to be \$750,000.

26.

Professor Genasci is entitled to a declaration that defendants have violated the statutory provisions alleged herein.

27.

Professor Genasci will suffer irreparably injury if he is not reinstated to his position.

28.

Defendant University will not be harmed by reinstating the employment of a satisfactory, long term employee.

29.

The public is harmed by age discrimination and retaliation for exercising basic workplace rights.

30.

Professor Genasci is entitled to injunctive relief preventing defendants from discriminating and retaliating against him as alleged herein on such terms as the Court deems appropriate.

CLAIMS FOR RELIEF ORS – Chapter 659A

**Count I – 659A.030(1)(a), (b)
Age Discrimination
(Against Both Defendants)**

31.

Plaintiff realleges and incorporates paragraphs 1 through 26.

32.

Defendants' actions as alleged herein were substantially motivated by Professor Genasci's age.

33.

Defendants' actions as alleged herein were part of a pattern and practice of discriminating against employees based on age.

34.

Defendant Lindner acted to help, assist, or facilitate the commission of the unlawful employment practices alleged herein, promoted the accomplishment thereof, helped in advancing or bringing them about or in encouraging, counseling or inciting as to their commission and is therefore individually liable to plaintiff's state statutory claims for relief as a person pursuant to ORS 659A.030(1)(g).

35.

Plaintiff is entitled to recover his reasonable attorney fees and costs pursuant to ORS 659A.885.

**Count II – 659A.199
Retaliation for reporting a legal violation
(Against Both Defendants)**

36.

Plaintiff realleges and incorporates paragraphs 1 through 26.

37.

It is an unlawful employment practice to discriminate or retaliate against an employee for the reason that the employee has in good faith reported information that the employee believes is evidence of a violation of a state or federal law, rule or regulation.

38.

Defendants' actions as alleged herein were done singularly and as part of a systematic pattern of conduct in response to Professor Genasci's reports of information he reasonably believed was evidence of one or more violations of a state or federal law, rule or regulation in violation of ORS 659A.199.

39.

It is an unlawful employment practice pursuant to ORS 659A.030(1)(f) for any person to discriminate against any other person because that other person has opposed any unlawful practice under ORS chapter 659A or has attempted to do so.

40.

Defendant Lindner is a person for purposes of ORS 659A.030(1)(f). He acted to discriminate against Professor Genasci as alleged herein and is individually liable for such conduct.

41.

Plaintiff is entitled to recover his reasonable attorney fees and costs pursuant to ORS 659A.885.

Count III
659A.203(1)(b)(A)
Retaliation for Reporting Public Employer's Misconduct
(Against Both Defendants)

42.

Plaintiff realleges and incorporates paragraphs 1 through 26.

43.

It is an unlawful employment practice to prohibit an employee from disclosing information that the employee reasonably believes is evidence of a violation of federal or state law, rule or regulation, mismanagement, or abuse of authority.

44.

Defendants' actions as alleged herein were done singularly and as part of a systematic pattern of conduct in response to Professor Genasci's disclosure of information he reasonably

believed was evidence of one or more violations of a state or federal law, rule or regulation, or mismanagement or abuse of authority in violation of ORS 659A.203(1)(b)(A).

45.

It is an unlawful employment practice pursuant to ORS 659A.030(1)(f) for any person to discriminate against any other person because that other person has opposed any unlawful practice under ORS chapter 659A or has attempted to do so.

46.

Defendant Lindner is a person for purposes of ORS 659A.030(1)(f). He acted to discriminate against Professor Genasci as alleged herein and is individually liable for such conduct.

47.

Plaintiff is entitled to recover his reasonable attorney fees and costs pursuant to ORS 659A.885.

Count IV 659A.203(1)(d)
Discouraging disclosures of public employer's misconduct
(Against Both Defendants)

48.

Plaintiff realleges and incorporates paragraphs 1 through 26.

49.

It is an unlawful employment practice to discourage, restrain, dissuade, coerce, prevent or otherwise interfere with disclosure or discussions of information that the employee reasonably believes is evidence of a violation of any federal or state law, rule or regulation by the state, agency or political subdivision.

50.

Defendants' actions as alleged herein were done singularly and as part of a systematic pattern of conduct in response to Professor Genasci's protected activities. Defendants engaged in an unlawful employment practice by discouraging, preventing and interfering with the disclosure of information and retaliated against Professor Genasci in violation of ORS 659A.203(1)(d) because Professor Genasci disclosed or discussed information he reasonably believed was evidence of a violation of federal or state law, rule or regulation, mismanagement, or abuse of authority.

51.

It is an unlawful employment practice pursuant to ORS 659A.030(1)(f) for any person to discriminate against any other person because that other person has opposed any unlawful practice under ORS chapter 659A or has attempted to do so.

52.

Defendant Lindner is a person for purposes of ORS 659A.030(1)(f). He acted to discriminate against Professor Genasci as alleged herein and is individually liable for such conduct.

53.

Plaintiff is entitled to recover his reasonable attorney fees and costs pursuant to ORS 659A.885.

Count V – 659A.230
Retaliation for bringing a civil proceeding
(Against Both Defendants)

54.

Plaintiff realleges and incorporates paragraphs 1 through 26.

55.

It is an unlawful employment practice for an employer to in any manner discriminate or retaliate against an employee with regard to terms, conditions or privileges of employment for the reason that the employee has in good faith brought a civil proceeding against an employer.

56.

Defendants' actions as alleged herein were done singularly and as part of a systematic pattern of conduct in response to Professor Genasci's administrative complaint alleging age discrimination, in violation of ORS 659A.230.

57.

It is an unlawful employment practice pursuant to ORS 659A.030(1)(f) for any person to discriminate against any other person because that other person has opposed any unlawful practice under ORS chapter 659A or has attempted to do so.

58.

Defendant Lindner is a person for purposes of ORS 659A.030(1)(f). He acted to discriminate against Professor Genasci as alleged herein and is individually liable for such conduct.

59.

Plaintiff is entitled to recover his reasonable attorney fees and costs pursuant to ORS 659A.885.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests the Court to:

1. Declare defendants in violation of the statutes set forth in plaintiff's claims for relief;
2. Provide appropriate injunctive relief in favor of plaintiff to preventing defendants from continuing to discriminate and retaliate against him as alleged herein on such terms as the Court deems appropriate.
3. Order defendants to make plaintiff whole by providing compensation for non-economic losses in amounts as are awarded by the court or a jury;
4. Order defendants to compensate plaintiff for his economic losses in such amounts as are awarded by the court or a jury;
5. Award plaintiff his costs of suit and reasonable attorney fees, costs, and expert witness fees;
6. Order defendants to pay prejudgment interest and post-judgment interest on all amounts due to plaintiff as a result of this action, with interest at the prevailing rate; and
7. Order such further or alternative relief in favor of plaintiff as the court deems appropriate.

JURY TRIAL DEMAND

Plaintiff demands a jury trial on all questions of fact or combined questions of law and fact raised by this complaint.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests the Court to:

1. Declare defendants in violation of the statutes set forth in plaintiff's claims for relief;

2. Order defendants to make plaintiff whole by providing compensation for non-economic losses in amounts as are awarded by the court or a jury;
3. Order defendants to compensate plaintiff for his economic losses in such amounts as are awarded by the court or a jury;
4. Award plaintiff his costs of suit and reasonable attorney fees, costs, and expert witness fees;
5. Order defendants to pay prejudgment interest and post-judgment interest on all amounts due to plaintiff as a result of this action, with interest at the prevailing rate; and
6. Order such further or alternative relief in favor of plaintiff as the court deems appropriate.

JURY TRIAL DEMAND

Plaintiff demands a jury trial on all questions of fact or combined questions of law and fact raised by this complaint.

DATED February 8, 2019.

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