

Gary E. Fox, Esq. - I.D. No. 011251975
FOX & MELOFCHIK, L.L.C.
 12 Christopher Way
 Suite 101
 Eatontown, New Jersey 07724
 (732) 493-9400
 Attorney for Plaintiff

BRIAN FLYNN,

Plaintiff,

vs.

BRICK TOWNSHIP BOARD OF
 EDUCATION and SEAN S. CRANSTON,

Defendants.

:
 : SUPERIOR COURT OF NEW JERSEY
 : LAW DIVISION
 : OCEAN COUNTY
 : DOCKET NO.:
 :
 : CIVIL ACTION
 :
 : **COMPLAINT, DESIGNATION OF TRIAL**
 : **COUNSEL AND DEMAND FOR TRIAL**
 : **BY JURY**
 :

Plaintiff, BRIAN FLYNN, residing at 12 Drum Point Road, Apt. 57A, in the Township of Brick, County of Ocean and State of New Jersey, by way of Complaint against Defendants, BRICK TOWNSHIP BOARD OF EDUCATION and SEAN S. CRANSTON, says:

PARTIES

1. At all times mentioned herein, Plaintiff was employed by Defendant, Brick Township Board of Education as one of the grounds crew and was employed in that capacity since in or about October 2015.

2. At all times mentioned herein, Defendant Brick Township Board of Education (“Lakewood”) was responsible for establishing the terms, conditions and other practices regarding the employment of its employees, including the institution of workplace policies against discrimination.

3. At all times mentioned herein, Defendant Sean S. Cranston was the Director of Human Resources for the Brick Township Public Schools.

ALLEGATIONS COMMON TO ALL COUNTS

4. The Plaintiff repeats Paragraphs 1 through 3 as if set forth at length in full herein.

5. On or about February 19, 2019, the Plaintiff was instructed to immediately report to Human Resources.

6. Upon his arrival at Human Resources, he was informed that he had to take a urine drug test and an alcohol breath test. The alcohol breath test showed a positive alcohol level content.

7. The Plaintiff was then brought to his supervisor's office, whereupon, without being asked, the Plaintiff revealed that he had partaken in recreational cocaine use over the past weekend. The Plaintiff stated to his supervisor that he would do whatever was necessary in order to keep his job.

8. The Plaintiff's supervisor told the Plaintiff that he was suspended without pay effective immediately and handed the Plaintiff a Preliminary Notice of Disciplinary Action that was signed by Defendant Cranston.

9. On or about February 28, 2019, the Plaintiff attended a hearing with his union representative.

10. On or about March 1, 2019, the Plaintiff's union representative told him that his employment was terminated. The Plaintiff then received a letter from Defendant Cranston dated March 1, 2019 advising the Plaintiff that based upon the hearing, it was determined that the Plaintiff's removal from his job on February 19, 2019 was upheld and his employment was terminated.

11. At the time of his termination from employment, the Plaintiff had never received any written warnings of any kind or verbal reprimands of any kind.

FIRST COUNT

(Disability Discrimination in Violation of the New Jersey Law Against Discrimination)

12. The Plaintiff repeats Paragraphs 1 through 10 as if set forth at length in full herein.

13. The New Jersey Law Against Discrimination (“NJLAD”), N.J.S.A. 10:5-1 to 10:5-49, prohibits employment discrimination against individuals with a disability. Alcoholism is a protected disability under the Statute.

14. The NJLAD prohibits employers from terminating an employee on the basis of a disability.

15. The Defendants’ termination of the Plaintiff’s employment due to his disability was egregious, willful, wanton and/or in reckless disregard of the Plaintiff’s rights under the NJLAD.

16. As a direct and proximate result of the foregoing, the Plaintiff has sustained damages.

WHEREFORE, the Plaintiff demands judgment against the Defendants, Brick Township Board of Education and Sean S. Cranston, jointly, severally or in the alternative:

- (a) For compensatory damages;
- (b) For punitive damages;
- (c) For reinstatement;
- (d) For counsel fees and costs of suit;
- (e) For prejudgment interest; and
- (f) For such further relief as the Court may deem equitable and just.

SECOND COUNT
**(Failure to Make Reasonable Accommodations in Violation of the New Jersey Law
Against Discrimination)**

17. The Plaintiff repeats Paragraphs 1 through 16 as if set forth at length in full herein.

18. The NJLAD requires that employers must provide a reasonable accommodation to employees who have a disability.

19. Under the NJLAD, a reasonable accommodation includes time off and/or a leave of absence so that the employee can undergo treatment for his or her disability.

20. The NJLAD requires that employers engage in an interactive process to determine what reasonable accommodation the employee needs for his or her disability.

21. The Plaintiff informed his employer that he would do whatever was necessary in order to keep his job.

22. The Defendants failed to consider a reasonable accommodation for the Plaintiff's disability, in violation of the NJLAD. A reasonable accommodation would not have imposed an undue hardship on the Defendants.

23. The Defendants failed to engage in an interactive process with the Plaintiff, in violation of the NJLAD.

24. The Defendants' failure to consider a reasonable accommodation for the Plaintiff's disability and the Defendants' failure to engage in an interactive process with the Plaintiff was egregious, willful, wanton and/or in reckless disregard of the Plaintiff's rights under the NJLAD.

25. As a direct and proximate result of the foregoing, the Plaintiff has sustained damages.

WHEREFORE, the Plaintiff demands judgment against the Defendants, Brick Township Board of Education and Sean S. Cranston, jointly, severally or in the alternative:

- (a) For compensatory damages;
- (b) For punitive damages;
- (c) For reinstatement;
- (d) For counsel fees and costs of suit;
- (e) For prejudgment interest; and
- (f) For such further relief as the Court may deem equitable and just.

THIRD COUNT
(Selective Enforcement)

26. The Plaintiff repeats Paragraphs 1 through 25 as if set forth at length in full herein.

27. Pursuant to the Policy Manual of Defendant Brick Township Board of Education, Code 4119.23R (Substance Abuse – Regulation), at Paragraph C(3), “[a] staff member who has been determined to have been under the influence of a substance during work hours ... will be subject to appropriate discipline which may include termination ...” (emphasis added).

28. Other employees of Defendant Brick Township Board of Education have had the same or similar situation as that of the Plaintiff, however, those employees were sent to a drug/alcohol rehabilitation center for a period of thirty days and were not terminated from their employment.

29. The Defendants selectively enforced their workplace policies and rules by applying their policies and rules differently to similarly situated employees.

30. As a direct and proximate result of the foregoing, the Plaintiff has sustained damages.

WHEREFORE, the Plaintiff demands judgment against the Defendants, Brick Township Board of Education and Sean S. Cranston, jointly, severally or in the alternative:

- (a) For compensatory damages;
- (b) For punitive damages;
- (c) For reinstatement;
- (d) For counsel fees and costs of suit;
- (e) For prejudgment interest; and
- (f) For such further relief as the Court may deem equitable and just.

FOURTH COUNT
(Breach of Contract)

31. The Plaintiff repeats Paragraphs 1 through 30 as if set forth at length in full herein.

32. Pursuant to the Policy Manual of Defendant Brick Township Board of Education, Code 4119.23R (Substance Abuse – Regulation), at Paragraph B(1)(b), “[t]he Principal or designee shall present to the staff member the report or information supporting the suspicion the staff member may be under the influence of a substance.”

32. This Plaintiff was not presented with the report or information supporting the suspicion that he was under the influence of a substance.

33. The Defendant breached its contract with the Plaintiff by failing to present him with the report or information supporting the suspicion that he was under the influence of a substance.

34. As a direct and proximate result of the foregoing, the Plaintiff has sustained damages.

WHEREFORE, the Plaintiff demands judgment against the Defendants, Brick Township Board of Education and Sean S. Cranston, jointly, severally or in the alternative:

- (a) For compensatory damages;
- (b) For reinstatement;
- (c) For prejudgment interest; and
- (d) For such further relief as the Court may deem equitable and just.

FIFTH COUNT
(Intentional Infliction of Emotional Distress)

35. The Plaintiff repeats Paragraphs 1 through 34 as if set forth at length in full herein.

36. The discrimination inflicted by the Defendants upon the Plaintiff was intentional, extreme and outrageous, was intended to produce emotional distress and/or was reckless and in deliberate disregard of a high probability that emotional distress would follow.

37. The Defendants' conduct caused the Plaintiff to suffer emotional distress so severe that no reasonable person could be expected to endure it.

38. The Defendants knew or should have known that their conduct would cause the Plaintiff to suffer emotional distress.

39. As a direct, foreseeable and proximate result of the Defendants' intentional actions and conduct, the Plaintiff was caused to suffer severe emotional distress.

WHEREFORE, the Plaintiff demands judgment against the Defendants, Brick Township Board of Education and Sean S. Cranston, jointly, severally or in the alternative:

- (a) For compensatory damages;
- (b) For punitive damages;
- (c) For reinstatement;

- (d) For counsel fees and costs of suit;
- (e) For prejudgment interest; and
- (f) For such further relief as the Court may deem equitable and just.

FOX & MELOFCHIK, L.L.C.
Attorneys for Plaintiff

Dated: Mar. 30, 2020

/s/ Gary E. Fox
GARY E. FOX, ESQ.
For the Firm

DESIGNATION OF TRIAL COUNSEL

PLEASE TAKE NOTICE that, pursuant to R. 4:25-4, Gary E. Fox, Esq. is hereby designated as trial counsel for this matter.

FOX & MELOFCHIK, L.L.C.
Attorneys for Plaintiff

Dated: Mar. 30, 2020

/s/ Gary E. Fox
GARY E. FOX, ESQ.
For the Firm

DEMAND FOR TRIAL BY JURY

PLEASE TAKE NOTICE that Plaintiff demands a trial by jury on all issues.

FOX & MELOFCHIK, L.L.C.
Attorneys for Plaintiff

Dated: Mar. 30, 2020

/s/ Gary E. Fox
GARY E. FOX, ESQ.
For the Firm

R. 4:5-1 CERTIFICATION

I hereby certify that the foregoing matter in controversy is not the subject of any other pending action in any court or of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated. I further certify that there are no other parties of whom I am aware who should be joined in this action.

Dated: Mar. 30, 2020

/s/ Gary E. Fox
GARY E. FOX, ESQ.

R. 1:38-7(b) CERTIFICATION

I hereby certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

Dated: Mar. 30, 2020

/s/ Gary E. Fox
GARY E. FOX, ESQ.

DEMAND FOR DISCOVERY OF INSURANCE INFORMATION

Pursuant to R. 4:10-2(b), demand is hereby made that Defendants disclose to the undersigned whether there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action, or to indemnify or reimburse for payments made to satisfy the

judgment, and provide the undersigned with true copies of those insurance agreements or policies, including, but not limited to, any and all declaration sheets. This demand shall include and cover not only primary coverage, but also any and all excess, catastrophe, and umbrella policies.

FOX & MELOFCHIK, L.L.C.
Attorneys for Plaintiff

Dated: Mar. 30, 2020

/s/ Gary E. Fox
GARY E. FOX, ESQ.
For the Firm

Civil Case Information Statement

Case Details: OCEAN | Civil Part Docket# L-000876-20

Case Caption: FLYNN BRIAN VS BRICK TWP. BOARD OF EDUCATION

Case Initiation Date: 03/30/2020

Attorney Name: GARY E FOX

Firm Name: FOX & MELOFCHIK LLC

Address: 12 CHRISTOPHER WAY STE 101

EATONTOWN NJ 07724

Phone: 7324939400

Name of Party: PLAINTIFF : Flynn, Brian

Name of Defendant's Primary Insurance Company

(if known): None

Case Type: LAW AGAINST DISCRIMINATION (LAD) CASES

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Are sexual abuse claims alleged? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? YES

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

03/30/2020

Dated

/s/ GARY E FOX

Signed