

**STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS**

Joann L. Proietto, Complainant	:	No. OPH/WBR-2005-009
v.	:	
Whitney Manor Convalescent Center, Inc., Respondent	:	March 1, 2006

RULING ON MOTION TO DISMISS

The complainant filed this complaint pursuant to General Statutes § 4-61dd (b) (3) (A) on August 29, 2005, alleging that the respondent, Whitney Manor Convalescent Center, Inc.(her former employer), retaliated against her because she engaged in protected "whistleblowing" activities. The respondent filed a timely answer, and on September 21, 2005 I conducted a duly noticed "initial conference" pursuant to § 4-61dd-9 of the Regulations of Connecticut State Agencies.

On October 26, 2005, the respondent filed a motion to dismiss this action, claiming, among other things, that the complainant has not satisfied the jurisdictional prerequisites to bring this action. On January 25, 2006, the complainant filed a timely objection to the motion to dismiss. On March 1, 2006, I conducted oral argument on the motion and orally dismissed this case. This memorandum of decision serves as written recapitulation of that dismissal.

A motion to dismiss is an appropriate means to challenge a tribunal's jurisdiction to hear an action. *Jolly, Inc. v. Zoning Board of Appeals*, 237 Conn. 184 (1996); *Upson v.*

State, 190 Conn. 622, 624 (1983). The motion admits all facts well-pleaded and invokes any record that accompanies the motion, including supporting affidavits that contain undisputed facts. *Malasky v. Metal Products Corp.*, 44 Conn. App. 446, 451-52, cert. denied, 241 Conn. 906 (1997). In evaluating the motion, the complainant's allegations and evidence must be accepted as true and interpreted in a light most favorable to the complainant; every reasonable inference is to be drawn in her favor. *New England Savings Bank v. Bedford Realty Corp.*, 246 Conn. 594, 608 (1998).

The main purpose of General Statutes § 4-61dd is to protect employees of the state, quasi-public agencies, or large state contractors who have disclosed information about corruption, unethical practices, violation of laws, mismanagement, gross waste of funds, abuse of authority, or danger to the public safety occurring in any state department or agency, any quasi-public agency, or any large state contract. A person disclosing such information is known in lay terms as a "whistleblower." A whistleblower should feel free to report such information without fear of retaliation.¹ Thus, according to § 4-61dd (b) (1),

No state officer or employee, as defined in section 4-141, no quasi-public agency officer or employee, no officer or employee of a large state contractor and no appointing authority shall take or threaten to take any personnel action against any state or quasi-public agency employee or any employee of a large state contractor in retaliation for such employee's or contractor's disclosure of information to an employee of (i) the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this section;

¹ As Representative O'Rourke stated in legislative hearings on House Bill 5487, the purpose of the bill that, when passed as Public Act 02-91, gave this tribunal authority to adjudicate whistleblower-retaliation cases, was "to create a more favorable environment whereby state workers and employees of large state contractors feel free to bring forth important information of waste, fraud, abuse and possible cases of corruption . . ." 45 H.R. Proc., Pt. 9, 2002 Sess., p. 2857.

(ii) the state agency or quasi-public agency where such state officer or employee is employed;² (iii) a state agency pursuant to a mandated reporter statute; or (iv) in the case of a large state contractor, to an employee of the contracting state agency concerning information involving the large state contract.

The complainant concedes that the respondent is neither a state agency nor a quasi-public agency. While the parties disagree whether the respondent is, in fact, a large state contractor, as that term is defined in § 4-61dd (h), I will assume for purposes of this motion that, based on the record before me, the respondent meets the statutory definition. (See complainant's Memorandum of Law in Opposition to Motion to Dismiss, Exs. A and E.)

Nevertheless, even when construing the record in a light most favorable to the complainant, I must conclude that the complainant failed to satisfy a critical prerequisite to bringing this action. To support a retaliation case, the complainant must demonstrate that she was subject to an adverse personnel action (e.g., her termination), or threat thereof, after she disclosed information described in § 4-61dd (a) to one of the four entities identified in § 4-61dd (b) (1). She has failed to satisfy the disclosure requirement and, accordingly, this tribunal lacks jurisdiction over her complaint.

The record reveals only that the complainant made certain disclosures to the respondent's "administrator"--and possibly to its president--on several occasions prior to her termination. She did not, however, make any disclosure to the auditors of public accounts until after her termination and after she filed this complaint. Given the timing

² The phrase "state officer or employee" refers not to an employee who has exercised her rights under this statute, but to the person who took or threatened the retaliatory action. This scenario does not apply in this case, as Whitney Manor is not a state or quasi-public agency.

of her disclosure to the auditors, such disclosure could not have triggered any adverse personnel action.

Moreover, the record unequivocally shows that the complainant made no disclosure to any state or quasi-public agency pursuant to a mandated reporter statute. Finally, when, as here, a large state contract is involved, a whistleblower must first disclose information not to her employer (the large state contractor), but to the contracting state agency. This the complainant has failed to do.

In light of the foregoing, I conclude that this tribunal has no jurisdiction over this case and, accordingly it must be, and hereby is, dismissed.

Date

David S. Knishkowsky
Human Rights Referee

Copies mailed to all parties on this date
by certified mail, return receipt requested.