



## BUILDING a precedent

Architect wins in first trial  
under expanded whistleblower law

BY PETER VIETH



An architect fired by the city of Alexandria has won the first case under a new whistleblower law that allows state and local government workers to sue for retaliatory job actions under the Virginia Fraud Against Taxpayers Act.

Attorney Zachary A. Kitts of Fairfax is using the law, adopted in 2011, to seek more than \$450,000, plus attorneys' fees, from the city.

An Alexandria jury on March 8 returned a back pay award of \$104,050 for former city architect Henry Lewis. That amount would be doubled under the VFTA for a back pay judgment of \$208,100. Lewis seeks an additional \$246,528 for loss of pension benefits, front pay, and paid leave. The court also will hear Kitts' bid for attorneys' fees.

Legislation passed two years ago made it possible for a state or local government employee to recover under the VFTA. The change was a response to the case of a Goochland County employee who contended he was fired for reporting wrongdoing but had his claim barred by sovereign immunity.

#### Plaintiff alleged contractor shortcuts

In the Alexandria case, Lewis said he was harassed, threatened and fired because he refused to go along with his superior's cozy dealings with a construction contractor.

With 35 years of construction management experience, Lewis served as senior project manager for an \$81-million police headquarters project. His job was to oversee invoices sent by the contractor and serve as "sort of the hub of the wheel," Kitts said.

"He had sterling performance appraisals," Kitts said.

Lewis claimed he fought to keep the contractor from cutting corners and overcharging on construction of a new city police headquarters. In response, Lewis said he was met



Kitts

with resistance and then open hostility from his supervisor for "souring" the city's relationship with the contractor.

Lewis contended he was simply trying to prevent fraud and protect the taxpayers of Alexandria.

Lewis was fired on Aug. 3, 2011, just over a month after the revised whistleblower law went into effect and only three months before the grand opening of the new police headquarters on Wheeler Ave, according to his lawsuit. He filed suit last April.

Alexandria Circuit Judge James C. Clark presided as the jury heard the evidence during the week of March 4. Lawyers for the city used two experts, Kitts said. One was a construction lawyer with a background in architecture and the other was an economist who disputed the value of Lewis' back pay claim.

Kitts said he used only an economist for expert testimony on the value of lost wages and benefits.

Kitts said the city declined to make any offer to settle Lewis' claim as the case approached trial.

Now that the jury has spoken, Clark will decide without a jury whether Lewis should be reinstated to his job and, if not, how much he should be compensated for lost pay from the date of his firing. Clark also will rule on a motion for more than \$175,000 in loss of pension benefits and more than \$14,000 for unused paid leave.

#### Plaintiff seeks name on plaque

Lewis has one special request for the judge. He wants his name added to the dedication plaque on the city's new \$81-million police headquarters.

When the building was dedicated in a ceremony in November, a plaque was mounted on the façade to memorialize those who helped bring it forth. Henry Lewis' name was not among the city officials listed there. "That really hurt him," Kitts said.

Lewis spent over three and one-half years on the design and construction of the building and viewed it as the "capstone of his career," Kitts wrote in a motion. Lewis' termination just as the building was completed deprived him of "the professional accolades that, in the world of architecture, go along with having one's name on a building."

City representatives at one point offered to have Lewis' name added to the plaque in exchange for releasing all claims against the city, Kitts said. He asked the judge to use his "equitable powers" to recognize Lewis through having his name added to the plaque as "Senior Project Manager."

#### Expansion of law opposed in 2011

Former Del. Bill Janis introduced the bill that opened the door for government employees to sue under the VFTA. The legislation followed the 2010 Virginia Supreme Court decision in *Ligon v. Goochland* (VLW 010-6-032).

Janis' 2011 bill won approval despite opposition by local governments who argued their grievance procedures already protected employees from wrongful firing.

Kitts – who often represents whistleblowers in suits under the state and federal fraud statutes – was at the Assembly to urge changes to keep Virginia's law in conformity with the federal statutes. Ironically, he joined with the local governments to oppose the Janis legislation, arguing expansion of the retaliation protection would encourage claims based on nothing more than gripes of fired employees.

The VFTA is more demanding than some lawyers realize, he said. Cases "must be based on documentary evidence prior to filing," he said. They are not suitable for claims based on "information and belief."

In the right case, however, the VFTA can be an effective tool, Kitts said. It offers a range of remedies to make an employee whole, including double back pay, equitable relief including reinstatement if possible, compensation for other lost benefits and attorneys' fees.

"I don't know of any wrongful termination provision in the Virginia Code that's as powerful," he said.

Lewis's case was unusual, Kitts said, for the quality of the documentary evidence he brought to the table. Lewis had used the Freedom of Information Act and the state-mandated grievance process to amass paper records to support his claims, Kitts said.

Alexandria city attorney James L. Banks advised through a staffer that his office would have no comment on the case.