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CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA

SCOTT MOORE, an individual, Plaintiff, v. **MASON CLASSICAL ACADEMY, INC.**, a Florida not for profit corporation, Defendant.	**CIVIL ACTION** **Case No. 20-CA-1471** **Judge: Elizabeth Krier**

ORDER GRANTING PLAINTIFF'S MOTION FOR TEMPORARY REINSTATEMENT

THIS CAUSE having come before the Court on Plaintiff's Motion for Temporary Reinstatement and the Court having reviewed the pleadings, conducted a full evidentiary hearing, heard argument of counsel and being otherwise fully advised in the premises, does hereby FIND, ORDER, and ADJUDICATE:

Findings of Fact & Conclusions of Law

1. Plaintiff Scott Moore was hired by Defendant Mason Classical Academy (hereafter known as "MCA") as its compliance officer on September 2, 2019.

2. The Defendant is a private company that operates a charter school and has a contract with Collier County Public Schools to provide elementary, middle and secondary school education to students in Collier County, Florida.

3. In his position as compliance officer, Mr. Moore was responsible for making sure that MCA was in compliance with all laws governing said institution.

4. On March 23, 2020, the Defendant conducted a board meeting that addressed an agenda item placed on the agenda by Board Member David Bolduc in regard to a company named

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Captivated Health supplying the Defendant's employees with health insurance. This agenda item was listed under "unfinished business" to be brought forward for approval by Defendant's Board Member, David Bolduc. No other venders were on the agenda nor was the possibility of other venders supplying such services addressed. However, at 7:20 A.M. on March 23rd, Mr. Bolduc sent the Defendant's Board President an email indicating he could no longer attend the March 23rd meeting. The Defendant's March 23rd Board Meeting began at 8:29 A.M. and the Board heard a lengthy presentation from a Captivated Health representative. Afterwards, the Board voted to "move forward with next steps" with Captivated Health.

5. Two days after the vote – March 25, 2020 – Captivated Health released the following to the media:

> Managing Captivated Health's Tampa-based team will be David Bolduc, who will serve as Director for the Southeast Region. David has deep experience in underwriting (American International Group), risk analysis and captive management (Strategic Risk Solutions) and reinsurance. David holds a Bachelor of Arts in Business Economics from Brown University. He also holds an Associate in Risk Management (ARM), Associate in Reinsurance (ARe) and is a Chartered Financial Analyst (CFA). David also brings first-hand experience with educational institutions, having served as a member of the Gulfview Middle School Advisory Committee, and Board Member of Mason Classical Academy.

6. Mr. Bolduc never disclosed his relationship with Captivated Health prior to or at the time of the Board's vote on March 23, 2020.

7. The Defendant conducted another board meeting on March 26, 2020, during which a community member broached Mr. Bolduc's relationship with Captivated Health. However, Mr. Bolduc did not respond, nor address the matter during that meeting. This caused Mr. Moore as the Compliance Officer to investigate Bolduc's ties to Captivated Health.

8. Mr. Moore investigated and then sent the Defendant's Board a communication that this Court finds constitutes a whistleblower letter on March 27, 2020 alerting them to Mr. Bolduc's

apparent conflict of interest and that "[t]here was no disclosure of the possible conflict before the board voted and no discussion by the board on if it was a conflict." Mr. Moore sent his communication to all Board members at 3:42 P.M. on March 27, 2020.

9. On April 1, 2020, Mr. Bolduc sent the Board a response to Mr. Moore's March 27th Whistleblower Letter, stating in pertinent part:

- He knew at least as of February 6, 2020 there was "a high likelihood I will become affiliated with Captivated Health, and a high likelihood that Captivated Health will come before the MCA Board."
- He was instructed by Defendant's counsel "to disclose any potential conflict, and recuse myself from any vote, if Captivated Health ever came before the MCA Board."
- He "became formally associated with Captivated Health" on February 18, 2020.
- He requested that the Board add his "potential conflict as an agenda item at the next scheduled Board Meeting." (This was after two boards meetings addressing Captivated Health providing services at which he did not disclose his affiliation with said entity.)

10. At 4:30 P.M. that same day, the Defendant's Board President sent an email to the school's Executive Director that states in pertinent part:

> I think you may want to take a closer look at some of the Principal's closest allies at the school and the competence level. The job market will likely be saturated with highly competent people that will work hard and do their jobs... Is there a job posting for compliance officer?

11. In the days that followed, the Defendant restricted Mr. Moore's access to the Defendant's email server.

12. On April 7, 2020, the Defendant's Board President sent another email to the school's Executive Director, this time writing "Could you please send Mr. Moore's contract to me please?"

13. The Defendant's Board had scheduled a meeting at 4:30 P.M. on April 14, 2020. At 1:30 P.M. on April 14, 2020, the Defendant's Board President sent the school's IT Manager an email

that states in pertinent part: "I spoke to our legal counsel and Mr. Moore's email access off. I don't mean to get you involved but it needs to happen immediately."

14. During the Defendant's April 14th Board Meeting, Mr. Bolduc (i) acknowledged "well of course there was no disclosure of the possible conflict before the board voted, as I did not attend the meeting when the board voted to approve Captivated Health," and (ii) accused Mr. Moore of "working to undermine Mason Classical Academy" and acting "in opposition to MCA's Pillars of Virtue the entire time." (Emphasis in meeting minutes). The Defendant's Board President even acknowledged that there was a duty to disclose the conflict on interest.

15. One Board Member, Mr. Conrad Willkomm, Esq., brought a motion to find that Mr. Bolduc did in fact have a conflict of interest; however, no board member seconded the motion and it failed. He then made a motion to rescind the March 23rd vote regarding Captivated Health, which passed by a 3-1 vote, the lone dissenter being the Defendant's Board President.

16. The Defendant's Board president then brought a motion to terminate Mr. Moore, stating "it has been determined that there are serious 'red flags' with the way Mr. Moore has been operating." While Mr. Willkomm dissented, the motion passed by a 4-1 vote, with Mr. Bolduc voting in favor of terminating Mr. Moore. The termination occurred months prior to the end of Moore contract.

17. Amongst the relief available to a PWA plaintiff is mandatory temporary reinstatement. The entirety of (9)(f) reads:

> Temporary reinstatement to the employee's former position or to an equivalent position, pending the final outcome on the complaint, if an employee complains of being discharged in retaliation for a protected disclosure and if a court of competent jurisdiction or the Florida Commission on Human Relations, as applicable under s. 112.31895, determines that the disclosure was not made in bad faith or for a wrongful purpose or occurred after an agency's initiation of a personnel action against the employee which includes documentation of the employee's violation of

a disciplinary standard or performance deficiency. This paragraph does not apply to an employee of a municipality.

18. "The public-sector act specifically prevents independent contractors as well as agencies from taking retaliatory action against employees who report violations of law on the part of the agency or independent contractors of the agency," *Dahl v. Eckerd Family Youth Alternatives, Inc.*, 843 So. 2d 956, 958 (Fla. 2d DCA 2003) (*citing* F.S. §112.3187(2)), or who disclose information "alleging improper use of governmental office, gross waste of funds, or any other abuse or neglect of duty on the part of an agency, public officer, or employee," F.S. § 112.3187(2); *see also Sussan v. Nova Southeastern Univ.*, 723 So. 2d 933, 934 (Fla. 4th DCA 1999). Moreover, under F.S. § 1002.33, charter schools are public schools.

19. The PWA is a remedial statute, and remedial laws will be read to favor the remedy. *The Golf Channel v. Jenkins*, 752 So. 2d 561, 565-66 (Fla. 2000); *Arrow Air, Inc. v. Walsh*, 645 So. 2d 422, 424 (Fla. 1994); *Irven v. Dep't of Health and Rehab. Svcs.*, 790 So. 2d 403, 405–406 (Fla. 2001)(*quoting Martin County v. Edenfield*, 609 So. 2d 27, 29 (Fla. 1992)). The PWA should be liberally interpreted to accomplish its intended purpose. *Martin County v. Edenfield*, 609 So. 2d 27, 29 (Fla. 1992); *Hutchison v. Prudential Ins. Co. of America, Inc.*, 645 So. 2d 1047 (Fla. 3d DCA 1994).

20. §(9)(f) explicitly provides for "[t]emporary reinstatement to the employee's former position or to an equivalent position, pending the final outcome on the complaint." This pre-trial relief is available to a plaintiff so long as: (1) the disclosure was not made in bad faith or for a wrongful purpose, or (2) the disclosure did not occur after an agency's initiation of a personnel action against the employee. Absent these two conditions, an employee who complains of being discharged in retaliation for a protected disclosure is entitled to pre-trial reinstatement as a matter of law.

21. To establish that the employee engaged in protected activity under the PWA, an employee must show that he disclosed (1) protected information (2) to a protected recipient (3) in a protected manner. *See id.* § 112.3187(5)-(7). The Court finds all three elements have been met.

22. The Court finds that Mr. Bolduc's conflict of interest should have been disclosed prior to or at the time of the March 23rd vote, as well as all of the specifics for what benefits might have inured to Mr. Bolduc from the entity with which he was/is affiliated providing services to MCA. Such a conflict of interest was significant and is particularly concerning because it involved using public money to pay for a contract that might have a positive financial benefit, personally, for a board member. The Court finds that there is no place in government or public organizations where that is permissible, and thus what Mr. Moore complained of was an illegal act that created a danger to the public's welfare and treasury, in addition to Mr. Bolduc's actions constituting gross mismanagement, malfeasance, misfeasance, gross waste of public funds, and/or gross neglect of duty.[1]

23. Second, the information must be disclosed to a person or entity falling within one of two protected categories:

> [1] [A]ny agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation or act, including, but not limited to, the Office of the Chief Inspector General, an agency inspector general or the employee designated as agency inspector general under s. 112.3189(1) or inspectors general under s. 20.055, the Florida Commission on Human Relations, and the whistle-blower's hotline created under s. 112.3189 [or]
>
> [2] [F]or disclosures concerning a local governmental entity, including any regional, county, or municipal entity, special district, community college district, or school district or any political subdivision of any of the foregoing, the information must be disclosed to a chief executive officer as defined in s. 447.203(9) or other appropriate local official.

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[1] The fact that the Board determined that there wasn't a conflict does not mean that there wasn't a conflict or wasn't a possible conflict under the law. The Court finds a conflict of interest and finds that it was a serious one.

Id. § 112.3187(6).

24. Under F.S. § 1002.33, charter schools are public schools. Florida courts construe the term "other appropriate local official" broadly to include a variety of entities "empowered to investigate complaints and make reports or recommend corrective action." *See Rustowicz v. N. Broward Hosp. Dist.*, 174 So.3d 414, 423-25 (Fla. Dist. Ct. App. 2015) (reviewing other Florida decisions and opinions issued by the Florida Attorney General).

25. The Court finds that Mr. Moore investigated Mr. Bolduc's conflict of interest, and then he did his job and communicated it to the Defendant's Board, which is the appropriate local official to receive such a complaint because the Board is vested with the authority to take remedial action, which it actually then did on April 14, 2020.

26. Third, the employee's disclosures must have been made in a protected manner. This can occur in one of two ways. The PWA provides that it protects employees (1) "who disclose information on their own initiative in a written and signed complaint" or (2) "who file any written complaint to their supervisory officials." F.S. § 112.3187(7).

27. The court finds that Mr. Moore's March 27, 2020 letter meets either standard. All three elements are necessary to establish statutorily protected activity under the PWA. Because the Court finds that Moore engaged in statutorily protected activity under the PWA, the inquiry then turns to the timing of the adverse employment action.

28. The plain text of the PWA mandates temporary reinstatement where the employee has been discharged. Here, the Defendant does not deny that it terminated Mr. Moore.

29. The Court further finds that the timing of the adverse employment action occurred after Mr. Moore engaged in statutorily protected activity under the PWA. Mr. Moore engaged in statutorily protected activity on March 27, 2020 and was then terminated on April 14, 2020. At no

time prior to March 27th was Mr. Moore the target of any kind of discipline or investigation, nor was he ever even placed on any administrative leave at any point. And, it is clear from the testimony of the MCA representatives that Mr. Moore was terminated because of the communication.

30. Finally, there is no evidence that Mr. Moore made his disclosures in bad faith or for any wrongful purpose. His disclosure actually falls squarely within his job duties. Reporting serious conflicts of interest like this is exactly what the Defendant paid Mr. Moore to do.

31. In conclusion, the Court finds that Mr. Moore has shown that (1) prior to termination he made a disclosure protected by the statute; (2) he was discharged; and (3) the disclosure was not made in bad faith or for a wrongful purpose, and did not occur after adverse personnel action. *State of Florida Dep't of Transp. v. Florida Com'n on Human Relations*, 842 So.2d 253, 255 (1st DCA 2003) (*citing Lindamood v. Office of State Attorney, Ninth Judicial Circuit of Florida*, 731 So. 2d 829, 831 (5th DCA 1999)). This is all that is required for temporary reinstatement under the PWA, and Mr. Moore is due to be temporarily reinstated. *Marchetti v. Sch. Bd. of Broward Cty.*, 117 So. 3d 811, 814 (Fla. Dist. Ct. App. 2013)(*quoting Lindamood*, at 833 ("[t]he relief spelled out in the statute mandates temporary reinstatement" where the plaintiff meets all of the statutory requirements.")).

THEREFORE, the Court orders the following:

1. **For the reasons above and those stated on the record, the Plaintiff's Motion for Temporary Reinstatement is GRANTED.**
2. **The Defendant shall reinstate the Plaintiff forthwith, retroactive to his April 14, 2020 date of termination.**
3. **Absent an order to the contrary, the Defendant shall not discharge or otherwise separate the Plaintiff from his re-employment pursuant to this Order.**
4. **The Court reserves jurisdiction to enter such further orders as necessary.**

eSigned by Krier, Elizabeth V in 11-2020-CA-001471-0001-XX 09/13/2020 12:18:10 -2yugghn

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