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Court rules for reservist who was denied his old job

By CHRISTIAN NOLAN

When Air Force Sgt. Michael Serricchio returned from the Middle East, he was dismayed when his employer would not give him his old financial advisor's job back, and instead offered a less lucrative position.

So Serricchio sued under a federal law designed to protect returning military personnel. Last week, he got his job back – along with more than \$1 million in damages.

The case has drawn national attention at a time when President Barack Obama has said he plans to wind down the war in Iraq, which would bring tens of thousands of soldiers, sailors and Marines back into the work force.

“This is a very important case,” said Samuel F. Wright, a retired Navy captain who is now an attorney with Tully Rinckey in Washington, D.C. “This law is relevant now more than ever.”

Serricchio was represented by attorney David Golub, of Silver, Golub & Teitell in Stamford. The decision “does send an important message to both employers and service men and women,” said Golub, who was assisted by attorney Craig Yankwitt. “Mike feels it was very important to vindicate that right because there are others he's talked to who were activated after 9/11 who are afraid of what their job situation is.”

Serricchio worked for Prudential Securities in Stamford, a firm that has since been absorbed by Wells Fargo. The financial services giant is represented by attorney David Ross, of Sayfarth Shaw's New York City office. He referred comment to a spokesman for Wells Fargo's Wachovia unit, who would say only that the company was “exploring our options including the possibility of an appeal.”

Helicopter Missions

Before the terrorist attacks of Sept. 11, 2001, Michael Serricchio was a successful financial advisor earning more than \$200,000 annually for Prudential in Stamford.

But after Sept. 11, circumstances changed dramatically. Serricchio was one of the first Air Force reservists called to active duty, a status he maintained until October 2003. He went from selling insurance to wealthy clients to flying a helicopter on reconnaissance missions in Saudi Arabia.

Before Serricchio left, he said that Prudential agreed to hold his 237 customer accounts for him; they would be temporarily serviced by a colleague. Two years later, however, the situation had changed.

Serricchio returned to find that Prudential was now Wachovia. And that the office holding his accounts was in Westport rather than Stamford. And that many of his former co-workers, including the one entrusted to service his customers, had been terminated.

Serricchio told Wachovia he wanted his job back. He got an answer four months later. He could return, but instead of his old, commissioned-based position, his new job would pay a flat \$2,000 a month. Among his proposed new tasks were cold-calling dormant accounts.

Serricchio, who now lives in Westfield, Mass. with his wife and young children, declined Wachovia's job offer and assisted his wife with a tanning salon business.

He also hired Golub, who filed a lawsuit against Wachovia for violating the Uniform Services Employment and Reemployment Rights Act (USERRA), a federal statute designed to protect service personnel who leave their jobs when called to duty.

In June, a jury sided with Serricchio, finding that Wachovia failed to reinstate Serricchio to a similar position, as required by USERRA. The latest chapter will likely be the one with the most long-term impact for veterans returning to the work force.

On March 19, U.S. District Court Judge Janet B. Arterton awarded Serricchio his old job back and the \$1 million in damages. The total included back pay, prejudgment interest and liquidated damages against Wachovia for "willfully" violating the federal employment law.

Serricchio told the Law Tribune he would likely begin work as early as this week as a Wells Fargo financial advisor in either Hartford or Springfield, Mass. Judge Arterton set his salary at \$12,300 a month for a year, until he is able to generate his own commission income through client accounts.

Arterton's award, according to a USERRA expert, is the largest in USERRA case law history. The judge even ruled that Wachovia must pay attorney's fees, which could add an additional half-million dollars to the award.

"I'm excited," said Serricchio. "I really hope the decision has a positive effect on our returning servicemen if they come back with the same obstacle. It's a huge challenge to stare that in the face."

'Burden on Employers'

Wright, the Washington, D.C., lawyer and retired Navy captain, helped draft an updated version of USERRA in 1994 when he was a U.S. Department of Labor attorney. He said many veterans return home and are unaware of their employment rights.

Wright also said many companies knowingly violate the law, figuring they can get away with it. Others simply don't know about the law.

USERRA requires that anyone leaving for the service must notify their employer orally or in writing ahead of time. The employee does not need permission to leave. And as long as the employee returns within five years, wasn't discharged for bad conduct, and notifies the employer within a few months of their return, he must be restored to his old position.

Wright said there are more USERRA claims than people might think but it is hard to keep tabs on them since the service men and women end up settling with their employers instead of going to trial.

He added that the current economic climate is no excuse for employers to violate the law. Wright said the only way for employers to deny a returning service member his job is to prove that the returning employee would have definitely been laid off had he never left.

"Yes, this law is a burden on employers," said Wright, "Congress decided that burden on employers and sometimes co-workers is justified by the nation's need to defend itself."