

STEIN, McGUIRE, PANTAGES & GIGL
354 Eisenhower Parkway
P.O. Box 460
Livingston, New Jersey 07039-0460
973-992-1100
Attorneys for Plaintiff, El'Jai Jordan Devoureau

RECEIVED

2011 APR -8 PM 12:40

SUPERIOR COURT/LAW DIVISION

Of Counsel:

GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166-0193

TRANSGENDER LEGAL DEFENSE & EDUCATION FUND, INC.
151 West 19th Street
Suite 1103
New York, NY 10011

EL'JAI JORDAN DEVOUREAU,

Plaintiff,

vs.

CAMDEN TREATMENT ASSOCIATES, LLC,
t/a URBAN TREATMENT ASSOCIATES, INC.,
VAN MACALUSO,

Defendants.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: CAMDEN COUNTY
: DOCKET NO.:

Civil Action

COMPLAINT AND JURY DEMAND

Plaintiff, El'Jai Jordan Devoureau, residing in Gloucester County, New Jersey, by way of
Complaint against the Defendants does herein say:

INTRODUCTION

1. Plaintiff El'Jai Jordan Devoureau is male. This case challenges – as unlawful discrimination – Defendants' decision to fire him from a job open only to males when Defendants learned that he is transsexual and had been assigned female at birth.

2. For transsexual persons such as Mr. Devoureau, the sex assigned to them at birth is not an accurate reflection of their sex. Transsexual persons seek to live in accordance with the sex that takes proper account of the sex of their brain – an immutable, intrinsic sense of being physically male or female – rather than the sex ascribed to them at birth.

3. Though assigned female at birth, Mr. Devoureau is male. He has permanently transitioned to male and his government-issued identification documents reflect the fact that he is male. Defendants hired him as a man.

4. In accordance with New Jersey law, it is unlawful to discriminate against Mr. Devoureau based on his sex or the fact that it differs from the sex assigned to him at birth. Mr. Devoureau is legally, medically, and socially male.

5. Despite his status as a man, Mr. Devoureau was fired by Defendants from his job as a urine monitor for men in a drug treatment center when Defendants were informed that he is transsexual and had been assigned female at birth. Defendants fired him solely because he is a transsexual man.

6. In doing so, Defendants violated the New Jersey Law Against Discrimination, N.J.S.A. § 10:5-1 *et. seq.*

PARTIES

7. At all relevant times, Plaintiff El’Jai Jordan Devoureau was an employee of defendant Camden Treatment Associates, LLC t/a Urban Treatment Associates, Inc. (hereinafter referred to as “Urban Treatment”).

8. Defendant Urban Treatment, with its principal place of business at 424-432 Market Street, Camden, New Jersey, operates a substance abuse treatment facility.

9. Defendant Van Macaluso is, on information and belief, the Director of Urban Treatment and, at all relevant times, had overall supervisory authority over Mr. Devoureau.

FACTS RELEVANT TO ALL COUNTS

10. Mr. Devoureau is legally, medically, and socially male.

11. In the years prior to applying for a job with Defendant Urban Treatment, Mr. Devoureau legally, medically, and socially transitioned to male.

12. In or around 2006, Mr. Devoureau sought medical treatment in connection with his transsexual status. He was diagnosed as transsexual and, as part of his treatment, he underwent psychological counseling and later initiated testosterone therapy.

13. On or about June 3, 2009, Mr. Devoureau underwent sex reassignment surgery.

14. In 2009, Mr. Devoureau obtained a court order changing his name to El'Jai Jordan Devoureau because this new name was more consistent with his male sex than the traditionally female name given to him at birth. This change was accepted and approved by the First Judicial District of Pennsylvania Court of Common Pleas of Philadelphia County on September 28, 2009.

15. Mr. Devoureau then applied to have his name and sex designation corrected on his government-issued identification documents. As reflected on official government documentation, both federally and at the state level, he is appropriately recognized as male, including on his driver's license (New Jersey), his Social Security records (federal), and his birth certificate (Georgia).

16. On or about June 7, 2010, Mr. Devoureau interviewed for a job as a urine monitor for men at Urban Treatment. The job duties for this position required monitoring male

outpatients as they provided urine samples for drug testing. By its terms, the position was open only to males, and Mr. Devoureau was a male.

17. Urban Treatment's Director, Defendant Van Macaluso, and her assistant, Michelle Norquest, interviewed Mr. Devoureau. At no time did Defendants ask Mr. Devoureau about his sex assigned at birth.

18. At the conclusion of the interview, Defendants offered Mr. Devoureau the job and told him to come in for training the next day. Defendants believed that Mr. Devoureau was male, and he was.

19. As part of completing Form I-9 (Employment Eligibility Verification), Mr. Devoureau presented his male identification.

20. On June 8, 2010, Mr. Devoureau reported for work, where he underwent training for his new position. As part of his training, Mr. Devoureau accompanied another experienced counselor in executing the job duties for this position. Mr. Devoureau and the other counselor performed the tasks required for the position without incident or complaint.

21. On or about June 9, 2010, Mr. Devoureau again reported for work. Soon after reporting for work, Defendant Van Macaluso alleged that, according to an unnamed person (who purported to know Mr. Devoureau personally), Mr. Devoureau was born female.

22. Defendant Macaluso asked Mr. Devoureau if he was male. Mr. Devoureau truthfully responded that he was male.

23. Defendant Macaluso then asked Mr. Devoureau if he had undergone any surgeries. Mr. Devoureau refused to answer because of the personal and inappropriate nature of the question, which is his right under New Jersey law. *See, e.g.* N.J. Admin. Code § 13:13-2.3 and § 13:13-2.4(e) (2010).

24. Based on those events, Defendant Macaluso fired Mr. Devoureau.
25. Urban Treatment sought others to fill the urine monitor position.
26. Mr. Devoureau has never been paid for the time he worked at Urban Treatment.
27. Since June 9, 2010, Mr. Devoureau has attempted without success to find replacement work for this terminated position.

COUNT ONE – SEX DISCRIMINATION

28. Mr. Devoureau repeats and repleads each and every allegation contained in paragraphs 1 through 27 of the Complaint as if fully set forth at length herein.

29. At all relevant times, Mr. Devoureau applied for and was hired to perform a job at Urban Treatment, which included, among other things, urine monitoring of male outpatients.

30. At all relevant times, Mr. Devoureau performed his job in a satisfactory manner.

31. On or about June 9, 2010, Defendants terminated Mr. Devoureau from his position with Urban Treatment.

32. Defendant Van Macaluso terminated Mr. Devoureau after learning from another employee that Mr. Devoureau is transsexual and had been assigned female at birth.

33. Defendant Van Macaluso terminated Mr. Devoureau because he is a transsexual man.

34. Pursuant to the New Jersey Law Against Discrimination, Mr. Devoureau is a member of a protected class based on his sex. N.J. Stat. Ann. § 10:5-12(a) (2010).

35. On information and belief, at all relevant times, Defendant Van Macaluso was the Director of Urban Treatment and had overall supervisory authority over Mr. Devoureau.

36. As Macaluso was Mr. Devoureau's supervisor, and on information and belief, was the Director of the program that employed Mr. Devoureau, Defendant Urban Treatment is vicariously liable for the conduct of Defendant Van Macaluso.

37. The termination of Mr. Devoureau's employment was unlawful and in violation of the New Jersey Law Against Discrimination as it constituted discrimination based on the protected class of his sex.

38. As a result of Mr. Devoureau's unlawful termination, Mr. Devoureau has suffered and will continue to suffer emotional distress and economic damages.

WHEREFORE, Mr. Devoureau demands judgment against the Defendants, Urban Treatment and Van Macaluso for the following:

- A. Reinstatement to his employment;
- B. Compensation for lost wages, benefits and other expenses incurred;
- C. Back pay and front pay;
- D. Compensatory and consequential damages for emotional distress and other injuries;
- E. Reasonable costs and attorney's fees;
- F. Punitive damages; and
- G. Such other relief as the Court may deem just and equitable under the circumstances.

COUNT TWO – GENDER IDENTITY DISCRIMINATION

39. Mr. Devoureau repeats and repleads each and every allegation contained in paragraphs 1 through 38 of the Complaint as if fully set forth at length herein.

40. At all relevant times, Mr. Devoureau applied for and was hired to perform a job at Urban Treatment which included, among other things, urine monitoring of male outpatients.

41. At all relevant times, Mr. Devoureau performed his job in a satisfactory manner.

42. On or about June 9, 2010, Defendants terminated Mr. Devoureau from his position with Urban Treatment.

43. Defendant Van Macaluso terminated Mr. Devoureau after learning from another employee that Mr. Devoureau is transsexual and had been assigned female at birth.

44. Defendant Van Macaluso terminated Mr. Devoureau because he is a transsexual man. At all relevant times, Mr. Devoureau identified and lived as male, *i.e.*, had a male gender identity and expression. This differed from his female sex assigned at birth.

45. Pursuant to the New Jersey Law Against Discrimination, Mr. Devoureau is a member of a protected class, transsexual persons, and cannot be discriminated against based on his gender identity or expression, N.J. Stat. Ann. § 10:5-12(a) (2010), “whether or not [such identity or expression is] stereotypically associated with a person’s assigned sex at birth.” N.J. Stat. Ann. § 10:5-5(rr) (2010).

46. On information and belief, at all relevant times, Defendant Van Macaluso was the Director of Urban Treatment with overall supervisory authority over Mr. Devoureau.

47. Because Macaluso was Mr. Devoureau’s supervisor, and on information and belief, was the Director of Urban Treatment, which employed Mr. Devoureau, Defendant Urban Treatment is vicariously liable for the conduct of Defendant Macaluso.

48. Mr. Devoureau’s termination was unlawful and in violation of the New Jersey Law Against Discrimination.

49. As a result of Mr. Devoureau's unlawful termination, he has suffered and will continue to suffer emotional distress and economic damages.

50. WHEREFORE, Mr. Devoureau demands judgment against the Defendants, Urban Treatment and Van Macaluso for the following:

- A. Reinstatement to his employment;
- B. Compensation for lost wages, benefits and other expenses;
- C. Back pay and front pay;
- D. Compensatory and consequential damages for emotional distress and other injuries;
- E. Reasonable costs and attorneys' fees;
- F. Punitive damages; and
- G. Such other relief as the Court may deem just and equitable under the circumstances.

COUNT THREE – DISABILITY DISCRIMINATION

51. Mr. Devoureau repeats and repleads each and every allegation contained in paragraphs 1 through 50 of the Complaint as if fully set forth at length herein.

52. At all relevant times, Mr. Devoureau applied for and was hired to perform a job at Urban Treatment which included, among other things, urine monitoring of male outpatients.

53. At all relevant times, Mr. Devoureau performed his job in a satisfactory manner.

54. At all relevant times, Mr. Devoureau had a disability: transsexualism.

55. According to the American Medical Association, transsexualism, which has mental and physical components, is "a serious medical condition recognized as such in both the Diagnostic and Statistical Manual of Mental Disorders 4th Edition (DSM-IV) and the

International Classification of Diseases (10th Revision); and is characterized in the DSM-IV as a persistent discomfort with one's assigned sex and with one's primary and secondary sex characteristics, which causes intense emotional pain and suffering."¹ Transsexual people generally seek to physically change their primary or secondary sex characteristics and socially transition from one sex to the other.

56. Pursuant to the New Jersey Law Against Discrimination, Mr. Devoureau is a member of a protected class based on his disability. N.J. Stat. Ann. § 10:5-12(a) (2010).

57. Mr. Devoureau's disability did not preclude his performance of the job responsibilities for the position of urine monitor in any way.

58. Nevertheless, on or about June 9, 2010, Defendants terminated Mr. Devoureau's employment.

59. Defendant Van Macaluso terminated Mr. Devoureau after learning from another employee that Mr. Devoureau is transsexual and had been assigned female at birth.

60. Defendant Van Macaluso terminated Mr. Devoureau because of his disability, transsexualism.

61. On information and belief, at all relevant times, Defendant Van Macaluso was the Director of Urban Treatment with overall supervisory authority over Mr. Devoureau.

62. As Macaluso was Mr. Devoureau's supervisor, and on information and belief, was the Director of the program that employed Mr. Devoureau, Defendant Urban Treatment is vicariously liable for the conduct of Defendant Van Macaluso.

¹ American Medical Association, *Removing Financial Barriers to Care for Transgender Patients*, AMA Resolution 122, 17 June 2008.

63. Mr. Devoureau's termination was unlawful and in violation of the New Jersey Law Against Discrimination as it constituted discrimination based on the protected class of his disability.

64. As a result of Mr. Devoureau's unlawful termination, Mr. Devoureau has suffered and will continue to suffer emotional distress and economic damages.

WHEREFORE, Mr. Devoureau demands judgment against the Defendants, Urban Treatment and Van Macaluso for the following:

- A. Reinstatement to his employment;
- B. Compensation for lost wages, benefits and other expenses incurred;
- C. Back pay and front pay;
- D. Compensatory and consequential damages for emotional distress and other injuries;
- E. Reasonable costs and attorney's fees;
- F. Punitive damages; and
- G. Such other relief as the Court may deem just and equitable under the circumstances.

JURY DEMAND

This Plaintiff demands a trial by a jury of six persons of all the issues of this case in accordance with Rule 1:8-2.

TRIAL ATTORNEY DESIGNATION

Pursuant to Rule 4:25-4, **Robyn B. Gigl** is hereby designated as trial counsel in the above captioned matter.

Respectfully submitted,

STEIN, MCGUIRE, PANTAGES & GIGL, LLP

By: 
ROBYN B. GIGL

OF COUNSEL

TRANSGENDER LEGAL DEFENSE &
EDUCATION FUND, INC.

MICHAEL D. SILVERMAN
NOAH LEWIS
EMILY CHALONER

GIBSON, DUNN & CRUTCHER LLP

JIM WALDEN (*pro hac vice* motion to
be submitted)
RACHEL LAVERY
LAUREN SAGER
BENAJMIN WASTLER

CERTIFICATION PURSUANT TO R. 4:5-1

ROBYN B. GIGL, upon her oath, deposes and says:

1. The above entitled litigation was the subject of a Verified Complaint filed by the New Jersey Division on Civil Rights, docket number ED 08EB-61921 which is being simultaneously withdrawn with the filing of this Complaint. This matter is not the subject of other litigation which is presently pending in the Superior Court of New Jersey.
2. An arbitration proceeding is not contemplated as of this date.
3. There are no other parties who should be joined in this action as at this time.

By: 
ROBYN B. GIGL