

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES J. CURRAN,	:	CIVIL ACTION
	:	NO. 95-8046
Plaintiff,	:	
	:	
v.	:	
	:	
PHILADELPHIA HOUSING AUTHORITY,	:	
	:	
Defendant.	:	

ORDER-MEMORANDUM

AND NOW, this 5th day of September, 1997, upon consideration the defendant's post-trial motions (doc. no. 74), and the plaintiff's response thereto (doc. no. 77), and the defendant's reply brief (doc. no. 80), and the plaintiff's sur-reply brief, it is **ORDERED** that the defendant's motions for judgment as a matter of law on the issue of punitive damages is **GRANTED**. It is **FURTHER ORDERED** that the portion of the judgment evidencing an award of punitive damages in the amount of \$750,000 is **VACATED**. It is **FURTHER ORDERED** that the defendant's motion to require the plaintiff to accept reinstatement is **DENIED**.<sup>1</sup> It is **FURTHER ORDERED** that defendant's motions for judgment as a matter of law, for a new trial, amendment of the judgment and remittitur as to all other issues are **DENIED**. The Court's reasoning is as

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<sup>1</sup> The animosity displayed by the parties towards each other while plaintiff was employed by defendant, especially considering the importance of mutual trust among law enforcement personnel, precludes the plaintiff's reinstatement. See Maxfield v. Sinclair Int'l, 766 F.2d 788, 796 (3d Cir. 1985) (observing that reinstatement is not appropriate where "the relationship between the parties may have been so damaged by animosity that reinstatement is impracticable").

follows.

## I. BACKGROUND

1. Plaintiff James J. Curran was employed as a police officer for the defendant Philadelphia Housing Authority ("PHA"). The plaintiff was injured on the job and was placed by the PHA on limited duty assignments. After approximately one year, the plaintiff was terminated by the PHA in accordance with an alleged unwritten policy to dismiss any PHA employee who does not return to full duty within a year of an on-the-job injury. The plaintiff thereafter filed suit against the PHA alleging that he was discriminated against based on his disability, in violation of the American with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq. and the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Cons. Stat. Ann. § 951 et seq. He also claims that he was retaliated against by the PHA for attempting to enforce his rights under those acts.

2. The jury awarded the plaintiff \$1,522,865, reduced by the Court to \$1,482,025 to account for workers' compensation and unemployment compensation benefits received by the plaintiff. The molded award included \$16,673 in back pay, \$315,352 in front pay, \$400,000 in non-economic damages for the plaintiff's past and future pain and suffering, and \$750,000 in punitive damages. The PHA now alternatively moves for a judgment as a matter of

law, a new trial or remittitur.<sup>2</sup>

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<sup>2</sup> The plaintiff began working for the PHA in December of 1993, after serving over twenty years in the Philadelphia Police Department. In March of 1994, the plaintiff was involved in an automobile accident while on duty and sustained injuries to his back. After two days, the plaintiff returned to work full-time but his treating physician limited his activities due to the plaintiff's back injury. Upon his return, the plaintiff was temporarily assigned to several duties and positions within the PHA which were viewed as being consistent with his particular limitations.

At first, the plaintiff worked successfully in several police positions but was then assigned to non-police positions without explanation. According to the plaintiff's testimony, several of these positions were demeaning. At one position his duties were to answer a phone, but he was assigned to a cubicle that had no phone for a week. His work hours were also changed to less desirable hours on two occasions without explanation. The plaintiff attempted to complain about his assignments to the Chief of the PHA police but the Chief refused to see him. He then called the office of the Executive Director of the PHA to complain but his call went unreturned. However, the Chief called the plaintiff to a meeting with he and the Deputy Chief shortly after the plaintiff's attempt to complain to the Executive Director. The plaintiff testified that the Chief told the plaintiff, in essence, that he would never advance above patrol officer because the plaintiff had attempted to go over the Chief's head with his complaint.

The plaintiff also produced evidence that prior to his hiring the individuals who later became the Chief and Deputy Chief, who were speaking in anticipation of being promoted to those positions, told the plaintiff that if he came to the PHA as a patrol officer he would be promoted to detective when they were elevated to Chief and Deputy Chief. However, after the plaintiff's injury, when the two actually advanced to Chief and Deputy Chief, the plaintiff was not promoted to detective. In fact, the plaintiff did not initially receive an interview for open detective positions.

Eventually the plaintiff received an interview for a detective position but was denied the promotion. The defendant produced evidence that the promotion was denied because the plaintiff scored poorly on the interview. The plaintiff then called into question the results of the interview because the Deputy Chief, who had been in attendance at the meeting between the plaintiff and the Chief, was one of the interviewers and he alone tallied the scores and did not keep the other interviewers comments.

Finally, approximately one year after the plaintiff's accident, the PHA terminated the plaintiff when he did not

## II. DISCUSSION

3. The PHA claims that the \$750,000 award of punitive damages should be vacated as a matter of law. The PHA contends that punitive damages are not available to the plaintiff under either the ADA or the PHRA. It argues that neither the ADA nor the PHRA allow the award of punitive damages against a government agency and that the PHRA does not allow the award of punitive damages altogether.

4. It is undisputed that under the ADA punitive damages are not available against a government agency. 42 U.S.C. §§ 1981a(a)(2), (b)(1). See also City of Newport v. Fact Concerts, Inc., 453 U.S. 247 (1981) (punitive damages not available against municipalities in case brought under 42 U.S.C. § 1983); Bolden v. Southeastern Pa. Transp. Auth., 953 F.2d 807, 811 (3d Cir. 1991)

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receive the authorization from a doctor to return to full duty. While the defendant provided testimony that the plaintiff's dismissal was in accordance with a PHA policy to dismiss any PHA employee who does not return to full duty within a year of an on-the-job injury, it failed to produce any written evidence of the existence of this policy.

Based upon a review of this evidence, the Court concludes that there was ample evidence to support the jury's award. Markovich v. Bell Helicopter Textron, Inc., 805 F. Supp. 1231, 1235 (E.D. Pa.), aff'd, 977 F.2d 568 (3d Cir. 1992) ("A court can only exercise its discretion to grant a new trial because the verdict was against the weight of the evidence when the failure to do so would result in injustice, or would shock the conscience of the court."). The Court has also considered the defendant's contentions that (1) the plaintiff failed to prove that he was disabled within the meaning of the ADA; (2) the plaintiff failed to prove that he was able to perform the essential functions of the position with or without a reasonable accommodation; (3) the defendant's one year of light duty was a reasonable accommodation; (4) the plaintiff failed to prove his retaliation claim; and (5) the plaintiff failed to prove non-economic damages, and finds them to be without merit.

(no punitive damages against SEPTA in case brought under 42 U.S.C. § 1983); Waring v. City of Philadelphia, Civ. A. No. 96-1805, 1996 WL 208348, at \*3 (E.D. Pa. Apr. 26, 1996) (under the ADA "it is clear that a party may not seek punitive damages from a municipal entity"). The Court has already determined that the PHA is a governmental agency. Order Denying Plaintiff's Motion in Limine to Exclude Evidence of James J. Curran's Receipt of Unemployment and/or Workers' Compensation Insurance Benefits, at 2 n.2 (Dec. 11, 1996). Therefore, punitive damages against the contends that even if he is precluded from receiving punitive damages under the ADA, he is permitted to recover punitive damages under the PHRA.<sup>3</sup>

5. The law on whether punitive damages may be awarded under

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<sup>3</sup> The plaintiff also contends that the defendant waived its right to oppose the award of punitive damages because the defendant failed to object to the inclusion of a jury instruction on punitive damages. The Court disagrees. Although the defendant did not object to the submission of the issue of punitive damages to the jury nor to the form of instruction, the Court has "the inherent power . . . to consider certain legal issues as required by the interests of justice despite the failure of the parties to preserve them in a timely fashion." Weaver v. Bowers, 657 F.2d 1356, 1361 (3d Cir. 1981) (citing City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 255-56 (1981) (finding that, despite the defendant's failure to object to the trial court's jury instruction on punitive damages, the court did not have to apply the stringent plain error standard in reviewing the issue of whether punitive damages were available against a government entity in a case brought under 42 U.S.C. § 1983)).

The Court views this case as an appropriate one to invoke its inherent powers in that a miscarriage of justice will result if punitive damages are allowed to stand without a basis in law. Even if the Court applied the plain error standard, the award of punitive damages would be an "obvious instance[] of injustice or misapplied law" which plain error review was intended to correct. City of Newport, 453 U.S. at 256.

the PHRA is not settled. Federal courts have almost uniformly concluded that punitive damages are available under the PHRA. See, e.g., Jackson and Coker, Inc. v. Lynam, 840 F. Supp. 1040, 1050 (E.D. Pa. 1993) (observing that "the Courts of this District have overwhelmingly concluded that there is a right to punitive damages under the PHRA"), aff'd, 31 F.3d 1172 (3d Cir. 1994); Galeone v. American Packaging Corp., 764 F. Supp. 349, 351-52 (E.D. Pa. 1991) (citing cases). Recently, however, a divided panel of the Pennsylvania Superior Court has held that, contrary to the holdings of the federal district courts, punitive damages are not available under the PHRA. Hoy v. Angelone, 691 A.2d 476, 483 (Pa. Super. 1997). The Pennsylvania Supreme Court has not addressed the issue.

6. Ordinarily, in the absence of controlling authority from the highest court of the state, the Court would be required to predict the future course of state law on the subject. The Court, however, finds it unnecessary to prognosticate whether punitive damages are available under the PHRA because it concludes that, even if punitive damages were available under the PHRA, punitive damages may not be awarded under Pennsylvania law against a government agency such as the PHA.

7. First, there is longstanding Pennsylvania public policy which counsels against allowing the recovery of punitive damages against a government agency. Order of Hermits of St. Augustine v. County of Philadelphia, 4 Clark 120 (Pa. 1847) (holding, in a trespass action, that exemplary damages could not be awarded

against the county).

8. This public policy was recently reinjected with vigor by the Pennsylvania Supreme Court. See, e.g., Feingold v. Southeastern Pa. Transp. Auth., 517 A.2d 1270, 1276-77 (Pa. 1986) (holding that punitive damages are not available against SEPTA in a tort action).

9. In Feingold, the Pennsylvania Supreme Court expressly adopted the reasoning of City of Newport that punitive damages would only burden

"the very taxpayers and citizens for whose benefit the wrongdoer is being chastised. The courts readily distinguish between liability to compensate for injuries inflicted by a [government agency's] officers and agents, and vindictive damages appropriate as punishment for the bad-faith conduct of those same officers and agents. Compensation was an obligation properly shared by the [government agency] itself, whereas punishment properly applied only to the actual wrongdoers."

Feingold, 517 A.2d at 1276 (quoting City of Newport, 453 U.S. at 263).

10. The Feingold court also noted that

[u]nlike compensatory damages, which have as their purpose the desire to make the plaintiff whole, the purpose of imposing punitive damages is to punish the wrongdoers and to deter future conduct. . . . Since the abolition of the common law doctrine of sovereign immunity, victims may now recover compensatory damages for injuries negligently caused by the Commonwealth and its agents. . . . Thus we are not faced with a situation where the person who has been injured will be left without recourse. What we are faced with is a situation where the public policy implications of assessing damages, effectively against the taxpayers and public at large, must be weighed against the necessity of punishing the entity which has been entrusted with performing a public function.

Feingold, 517 A.2d at 1276-77.

11. Finally, in a footnote, the Pennsylvania Supreme Court rejected the argument that the erosion of sovereign immunity should be extended to punitive damages by stating "[t]he only damages which are permitted against the Commonwealth, either by order of this Court or by statute, are those compensatory in nature." Feingold, 517 A.2d at 1276 n.8 (emphasis added).

12. The plaintiff cites several case which he characterizes as holding that punitive damages are available under the PHRA against government agencies. Plaintiff's Sur-Reply Memorandum at 29. The Court disagrees that these authorities support the plaintiff's case.

13. In Carter-Herman v. City of Philadelphia, Civ. A. No. 95-4030, 1995 WL 764574 (E.D. Pa. Dec. 21, 1995), Judge Bartle, indeed, denied a motion by the City of Philadelphia to dismiss the plaintiffs' claims for punitive damages against the City, holding "[w]here the General Assembly specifically provides for liability against the City and allows for recovery of punitive damages generally, without carving out an exception for the City, there is no basis for the courts to impose such an exception on their own." Id. at \*8. Although the issue was submitted to the jury, no punitive damages were awarded against the City of Philadelphia. In a post-trial motion, the plaintiff argued that it was error for the court to have bifurcated the jury's consideration of liability and compensatory damages from the punitive damage issues in the case. Judge Bartle explained his

earlier ruling allowing the issue of punitive damages to be submitted to the jury as follows:

Before we address this argument, it should be recognized that punitive damages were a point of contention for both sides in this case. When the smoke cleared, punitive damages were potentially applicable only to Officer Carter-Herman's PHRA claims against the City of Philadelphia. The defendants vehemently denied that punitive damages were available against a municipality under the PHRA; the plaintiff argued otherwise. While the defendants' point may have been correct, the court, out of an abundance of caution, instructed the jury on punitive damages and allowed argument on that point.

Carter-Herman v. City of Philadelphia, Civ. A. No. 95-4030, 1996 WL 745227 at \*5 (E.D. Pa. Dec. 23, 1996) (emphasis added). Given that the jury did not award punitive damages, therefore rendering the point moot, and in light of Judge Bartle's reservation as to the availability of punitive damages against the City of Philadelphia under Pennsylvania law, the Carter-Herman decision is not helpful to the plaintiff.

14. In Rogers v. Mount Union Borough, 816 F. Supp. 308 (M.D. Pa. 1993), the defendants filed a motion to dismiss plaintiff's punitive damage claims arising under 42 U.S.C. § 1983 and the PHRA arguing that the plaintiff failed to allege that the defendants knowingly and maliciously deprived him of his civil rights. The court dismissed the claims for punitive damages under section 1983, noting that punitive damages were not available against government agencies under the federal statute, but declined to dismiss the punitive damages claim brought under the PHRA "because a PHRA claimant may be awarded punitive

damages. . . . punitive damages in the PHRA setting require proof that a defendant knowingly and maliciously deprived plaintiff of his civil rights. . . . After careful scrutiny of the complaint, we believe plaintiff's punitive damages claim can survive the minimum pleading required to surmount a Fed. R. Civ. P. 12(b)(6) motion to dismiss." Rogers, 816 F. Supp. at 316. It does not appear from the court's opinion, however, that the defendant in Rogers argued that, as a municipality, it was immune from punitive damages. The Court concludes, therefore, that because the issue was not raised, the Rogers court did not address whether punitive damages were available against a government agency under the PHRA.

15. In Tyler v. Commonwealth of Pennsylvania, Department of Revenue, 793 F. Supp. 98 (M.D. Pa. 1992), the court considered whether the plaintiff could amend her Equal Pay Act and Title VII complaint to include compensatory and punitive damages and demand a jury trial under the Civil Rights Act of 1991. The court permitted the amendment stating in a footnote that "[i]t should be noted that had plaintiff pursued her claim under the Pennsylvania Human Relations Act, compensatory and punitive damages would have been available." Tyler, 793 F. Supp. at 101 n.3 (citing Gallo v. John Powell Chevrolet, Inc., 779 F. Supp. 804, 815-16 (M.D. Pa. 1991)). Tyler is inapposite to this case. First, the issue in Tyler was retroactivity under the Civil Rights Act of 1991 and not the award of punitive damages against a government agency under Pennsylvania law. Second, in the case

relied upon by the Tyler court for its observation that punitive damages were available under the PHRA, punitive damages had not in fact been awarded and the defendant in that case was not a government agency.

16. The final case cited by the plaintiff is Hill v. Pennsylvania Dept. of Environmental Protection, 679 A.2d 773 (Pa. 1996), is also distinguishable. In Hill, the Pennsylvania Supreme Court merely remanded to the lower court on jurisdictional grounds a claim of employment discrimination which sought compensatory and punitive damages brought under the Equal Employment Opportunities Act, the ADA, the Rehabilitation Act, and the PHRA, and did not address the issue of whether punitive damages were available against a government agency under the PHRA.

### III. CONCLUSION

17. Given that the Pennsylvania Supreme Court has expressed a strong public policy against allowing punitive damages to be awarded against a government agency, and in the absence of contrary authority recognizing an exception to the general Pennsylvania public policy for cases brought under the PHRA, the Court holds that punitive damages are not available against the PHA under the PHRA.

**AND IT IS SO ORDERED**

