

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0331-11T1

ANA MARIA RODRIGUEZ,

Plaintiff-Appellant,

v.

NEW TECH COMPANY,

Defendant-Respondent.

Submitted May 23, 2012 - Decided July 9, 2012

Before Judges Fuentes and Graves.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Docket No.
L-3262-09.

Ginarte O'Dwyer González Gallardo & Winograd,
LLP, attorneys for appellant (Matthew S. Schoen,
on the brief).

Respondent New Tech Company has not filed a
brief.

PER CURIAM

Plaintiff Ana Maria Rodriguez appeals from an August 5, 2011 order denying her motion for reconsideration of a prior order rejecting her claim for emotional distress damages under the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -42. For the reasons that follow, we reverse and remand.

On June 30, 2009, plaintiff filed a complaint against her former employer alleging, among other things, age discrimination in violation of the LAD. In an order dated April 30, 2010, the trial court permitted the withdrawal of defendant's attorney and required defendant to retain new counsel within thirty days. On May 10, 2010, plaintiff filed an amended complaint. Defendant failed to secure new counsel, and the court suppressed defendant's answer. Default was entered on March 22, 2011, when defendant failed to appear for trial.

The court conducted a proof hearing pursuant to Rule 4:43-2(b) on June 22, 2011. In addition to economic damages, plaintiff sought emotional distress damages because she was diagnosed and treated for depression after her supervisor repeatedly told her she was "either too old or . . . too sick to do the job."

In an oral decision, the court awarded plaintiff \$53,654 in economic damages. The court denied plaintiff's request for punitive damages reasoning as follows:

[I]n this case, the record is not clear that punitive damages are warranted. . . . [T]here was no testimony that . . . upper management actually had any indication of what the supervisor was doing, whether or not the plaintiff here complained to the upper management. So I don't think this is a case of an evil-minded act. So I'm not going to award the punitive damages.

The court's decision was memorialized in an order dated June 22, 2011. However, the court did not address plaintiff's claim for emotional distress damages.

In a motion for partial reconsideration, plaintiff argued the court erred when it ruled "emotional distress damages [could] only be awarded under New Jersey law as punitive damages." Plaintiff claimed that "emotional distress damages are a variety of compensatory damages and thus are distinct from punitive damages."

Plaintiff's motion for reconsideration was denied on August 5, 2011. In a statement of reasons attached to the order, the court explained why punitive damages were not appropriate under the LAD. But the court did not address plaintiff's claim that emotional damages are compensatory damages.

On appeal, plaintiff advances the same arguments she made to the trial court. She claims that the LAD allows a prevailing party to recover damages for emotional distress regardless of whether punitive damages are awarded. We agree.

In 1990, the Legislature amended the LAD to include the following language:

The Legislature further finds that because of discrimination, people suffer personal hardships, and the State suffers a grievous harm. The personal hardships include: economic loss; time loss; physical and emotional stress; and in some cases severe

emotional trauma, illness, homelessness or other irreparable harm resulting from the strain of employment controversies . . . anxiety caused by lack of information, uncertainty, and resultant planning difficulty; career, education, family and social disruption; and adjustment problems which particularly impact on those protected by this act. Such harms have, under the common law, given rise to legal remedies, including compensatory and punitive damages. The Legislature intends that such damages be available to all persons protected by this act and that this act shall be liberally construed in combination with other protections available under the laws of this State.

[N.J.S.A. 10:5-3 (emphasis added).]

Our Supreme Court has interpreted this language "to authorize recovery of emotional distress damages for discrimination claims." Tarr v. Ciasulli, 181 N.J. 70, 78 (2004). Thus, in discrimination claims brought under the LAD, "the victim may recover all natural consequences of that wrongful conduct, including emotional distress and mental anguish damages arising out of embarrassment, humiliation, and other intangible injuries." Id. at 82. Expert testimony or other independent corroborative evidence is not necessary to support an award of emotional distress damages. Rendine v. Pantzer, 141 N.J. 292, 312 (1995).

Compensatory damages resulting from emotional distress are separate and apart from punitive damages, which are generally

awarded to punish the offender and deter egregious misconduct. See, e.g., Leimgruber v. Claridge Associates, Ltd., 73 N.J. 450, 454 (1977) ("Punitive or exemplary damages are sums awarded apart from compensatory damages and are assessed when the wrongdoer's conduct is especially egregious.").

In the present case, there is no issue regarding the award of economic damages to plaintiff in the amount of \$53,654, and the motion judge correctly concluded that punitive damages were not warranted. However, the motion court failed to address plaintiff's claim for emotional distress damages. Accordingly, the order denying plaintiff's motion for reconsideration is reversed, and the matter is remanded for further proceedings consistent with this opinion.

Reversed and remanded. Jurisdiction is not retained.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



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