



IN THE CIRCUIT COURT FOR MADISON COUNTY,

PAUL C. KELLY,)
)
Plaintiff,)
)
v.)
)
DR. DEBORAH BARNHART, in her Official)
Capacity as Executive Director/Chief Executive)
Officer of the United States Space & Rocket)
Center; TODD J. SLYMAN; DANIEL WILSON;)
JOE COLLAZO; DONALD J. DAVIDSON;)
DOROTHY DAVIDSON; BHAVANI KAKANI;)
W. EVANS QUINLIVAN; L. KEITH SMITH;)
and KEVIN WEBBER, in their Official)
Capacities as Members of the Alabama Space)
Science Exhibit Commission Executive)
Committee,)
)
Defendants.)
)
)
)
)

CIVIL ACTION NO. _____

COMPLAINT/PETITION FOR WRIT OF MANDAMUS

Plaintiff Paul C. "Mike" Kelly ("Kelly"), for his complaint against defendants Dr. Deborah Barnhart ("Dr. Barnhart"), Todd J. Slyman, Daniel Wilson, Joe Collazo, Donald J. Davidson, Dorothy Davidson, Bhavani Kakani, W. Evans Quinlivan, L. Keith Smith, and Kevin Webber states as follows:

PARTIES

1. Kelly is an individual over nineteen (19) years of age and a resident of Madison County, Alabama.
2. Upon information and belief, Todd J. Slyman, Daniel Wilson, Joe Collazo, Donald J. Davidson, Dorothy Davidson, Bhavani Kakani, W. Evans Quinlivan, L. Keith Smith, and Kevin Webber (collectively referred to hereinafter as the "Executive Committee") are the



individual members of the Alabama Space Science Exhibit Commission's (the "ASSEC") executive committee and are named in their official capacities.

3. Dr. Barnhart is employed by the ASSEC as the Executive Director/Chief Executive Officer ("CEO") of the United States Space and Rocket Center ("USSRC") in Huntsville, Alabama and is named in her official capacity.

FACTUAL BACKGROUND

4. The ASSEC is a State agency which was created, and is governed, by its enabling legislation, *Ala. Code* §§ 41-9-430, *et seq.* (the "Enabling Legislation").

5. The ASSEC oversees the affairs and operation of the USSRC in Huntsville, Alabama.

6. The Enabling Legislation allows the ASSEC to create an executive committee to whom it may "delegate such powers and authority as the commission may deem to be advisable." *Ala. Code* § 41-9-431.

7. The Enabling Legislation gives the ASSEC authority "[t]o employ [a CEO] and such additional personnel as may be necessary to accomplish the purposes of this article." *Ala. Code* § 41-9-432(13).

8. This same provision of the Enabling Legislation provides, in pertinent part, that the ASSEC's employees "will serve at the pleasure of [the ASSEC]" and that the ASSEC "shall designate the duties and authority of the [CEO] and such additional personnel."

9. Upon information and belief, the ASSEC has delegated to the Executive Committee all authority allowed by the Enabling Legislation, which would include the authority to hire and fire any "additional personnel" employed by the ASSEC.



10. The Enabling Legislation provides no authority for the CEO of the USSRC to unilaterally terminate the ASSEC's employees.

11. The ASSEC operates under a set of policies and procedures which are set out in its Policies and Procedures Manual (the "Policies and Procedures").

12. The Policies and Procedures describe multiple committees and assign functions to each.

13. Pursuant to the "Organization & Staffing" section of the Policies and Procedures, the CEO of the USSRC is responsible for "employee recruitment, selection, testing and hiring."

14. The Policies and Procedures do not give the CEO of the USSRC authority to unilaterally terminate the ASSEC's employees.

15. Under the "Organization & Staffing" section of the Policies and Procedures, the ASSEC's vision and plans committee must review reports on "any involuntary staffing reduction."

16. Under the "Organization & Staffing" section of the Policies and Procedures, the Executive Committee must review, and may, approve selections of the CEO of the USSRC for "senior management positions."

17. On December 16, 2002, the ASSEC hired Kelly.

18. The ASSEC employed Kelly in a senior management position, Vice President of Licensing.

19. In or around December 2010, the ASSEC hired Dr. Barnhart as the CEO of the USSRC.



20. On or about January 28, 2011, Dr. Barnhart issued a letter to Kelly indicating that Kelly's employment with the ASSEC was being terminated effective January 30, 2011. A true and correct copy of Dr. Barnhart's January 28, 2011 letter is attached hereto as Ex. A.

21. Dr. Barnhart's January 28, 2011 letter does not indicate that she reported this "involuntary staffing reduction" to the ASSEC's vision and plans committee.

22. Dr. Barnhart's January 28, 2011 letter does not indicate that she submitted her selection of Kelly for termination from his senior management position to the Executive Committee for approval.

23. Upon information and belief, Dr. Barnhart did not report Kelly's termination to the ASSEC's vision and plans committee or the Executive Committee.

24. Upon information and belief, the Executive Committee has never taken any action to terminate Kelly's employment with the ASSEC.

25. The Enabling Legislation does not provide the CEO authority to unilaterally terminate the ASSEC's employees.

26. Dr. Barnhart does not possess authority, under the Enabling Legislation or the Policies and Procedures, to unilaterally terminate Kelly's employment with the ASSEC.

27. Kelly's termination by Dr. Barnhart was arbitrary, capricious, willful, malicious, fraudulent, in bad faith, beyond her authority, and/or under a mistaken interpretation of law.

COUNT I
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

28. Kelly re-alleges and incorporates the allegations contained in paragraphs 1-27 as if fully set forth herein.



29. There exists a justiciable controversy between Kelly and Dr. Barnhart and the Executive Committee concerning the Enabling Legislation, the Policies and Procedures, and the authority of Dr. Barnhart to unilaterally terminate Kelly's employment with the ASSEC.

30. Under the Enabling Legislation, the authority to terminate the employees of the ASSEC is delegable only from the ASSEC to the Executive Committee and is not delegable from the Executive Committee to Dr. Barnhart.

31. The Enabling Legislation does not grant Dr. Barnhart the authority to terminate the employees of the ASSEC.

32. The Policies and Procedures do not grant Dr. Barnhart authority to terminate the employees of the ASSEC.

33. Dr. Barnhart purportedly terminated Kelly's employment with the ASSEC on or about January 30, 2011.

WHEREFORE, premises considered, Kelly requests that this Court enter a judgment:

a. Declaring that the Enabling Legislation does not give Dr. Barnhart the authority to terminate the employees of the ASSEC;

b. Declaring that the Policies and Procedures do not give Dr. Barnhart authority to terminate the employees of the ASSEC;

c. Declaring that, under the Enabling Legislation and the Policies and Procedures, Dr. Barnhart had no authority to terminate Kelly's employment with the ASSEC;

d. Declaring that Dr. Barnhart's attempt to terminate the ASSEC's employment of Kelly is a nullity, void, and without effect;

e. Ordering that Kelly be reinstated to his position of Vice President of Licensing immediately; and



f. Such other further and different relief as the Court may deem just and proper.

COUNT II
WRIT OF MANDAMUS

34. Kelly re-alleges and incorporates the allegations contained in paragraphs 1-27 as if fully set forth herein.

35. The ASSEC hired Kelly on or about December 16, 2002.

36. Dr. Barnhart has no authority to terminate Kelly's employment with the ASSEC.

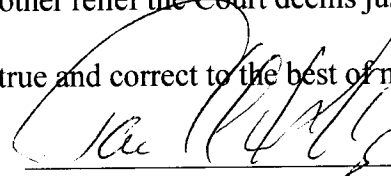
37. Upon information and belief, the ASSEC has delegated authority to hire and fire its employees to the Executive Committee.

38. Upon information and belief, the Executive Committee has taken no action to fire Kelly or terminate Kelly's employment since he was hired in December 2002.

39. Because the ASSEC hired Kelly in December 2002 and no valid action has been taken to terminate his employment since, the Executive Committee has a duty to reinstate Kelly to his position of Vice President of Licensing.

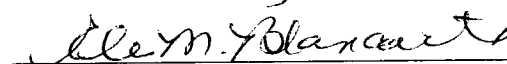
WHEREFORE, premises considered, Kelly requests that this Court order the Executive Committee to reinstate Kelly to the position of Vice President of Licensing and provide him with front-pay and employee benefits as he would be due to receive if Dr. Barnhart's purported termination of Kelly had not occurred and for any other relief the Court deems just and proper.

I hereby verify that the foregoing facts are true and correct to the best of my knowledge.



Paul C. Kelly

Sworn to and subscribed before me this the 25th day of January, 2012



Notary Public

My Commission Expires: 7/21/15



Date: January 25, 2012

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