

FILED

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(ALEXANDRIA DIVISION)**

Clay Nettles)
Plaintiff)

2011 SEP 16 P 3:25

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

v.)

Case # 1:11cv1000

Registry of Interpreters)
for the Deaf, Inc.)
333 Commerce St.)
Alexandria, Virginia)

AJT/TCB

Jury Trial Demanded as to Counts II and III

Service On:)
Matthew O'Hara)
Acting Executive Director)
333 Commerce St.)
Alexandria, Virginia)

and)

Cheryl Moose)
(In her individual capacity))
656 Michigan Avenue)
South Elgin, IL 60177)

and)

Brenda Walker Prudhom)
(In her individual capacity))
333 Commerce St.)
Alexandria, Virginia)

Defendants.

COMPLAINT

Plaintiff, Clay Nettles, ("Nettles" or "plaintiff") by and through his undersigned counsel, brings this complaint and alleges as follows.

NATURE OF THE CASE

1. This action is brought to recover benefits due and enforce certain rights under a plan covered by the Employee Retirement Income Security Act (29 U.S.C. § 1002 *et seq.*) ("ERISA") and pursuant to the civil enforcement provisions of 29 U.S.C. § 1132(a)(1)(B) and 29 U.S.C. § 1132(e).
2. State law claims for breach of contract and defamation are also brought against the defendants pursuant to the supplemental jurisdiction of this Court.

PARTIES

3. Plaintiff Clay Nettles is a resident of the Commonwealth of Virginia. From 1993 until July 11, 2011, Nettles was employed by defendant RID. From the year 2000 until his termination, he served as Executive Director of RID. At all times relevant to this Complaint, plaintiff was employed by defendant in this district and in this division.
4. Defendant Registry of Interpreters for the Deaf, Inc. ("RID") is a California non-profit corporation with its primary place of business in Alexandria, Virginia. RID's purpose is to provide certification and testing for interpreters for the deaf.
5. Defendant Cheryl Moose is the immediate-past president of defendant RID. At all times relevant to this Complaint, Moose was either the President of the Board of Directors of RID or was immediate past president. At all times relevant to this Complaint, Moose had actual and/or apparent authority to terminate the employment of Nettles and other employees of RID; she also had the power to control the working conditions of all RID employees. Moreover, Moose personally participated in the defamation complained of herein and in the decision to terminate Nettles' employment, breach his employment agreement, and deny Nettles' ERISA benefits.

6. Defendant Brenda Walker Prudhom is the current president of defendant RID. At all times relevant to this Complaint, Prudhom was either the President of the Board of Directors of RID or was a member of the Board of Directors. At all times relevant to this Complaint, Prudhom had actual and/or apparent authority to terminate the employment of Nettles and other employees of RID; she also had the power to control the working conditions of RID employees. Prudhom personally participated in the defamation alleged herein and in the decision to terminate Nettles' employment, breach his employment contract, and deny Nettles' ERISA benefits.

JURISDICTION AND VENUE

7. At all times relevant to this Complaint, RID administered and maintained one or more employee welfare benefit plans covered by ERISA within this district and within this division. Additionally, at all times relevant to this Complaint, RID was an employer engaged in commerce and/or was an employer engaged in an industry affecting commerce. This court therefore has subject matter jurisdiction over the ERISA claims under 29 U.S.C. § 1132 (e)(2).
8. There is supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367 because, among other reasons, the common law state claims arise from a common nucleus of operative fact.
9. Venue is proper in this District and in this Division pursuant to 28 U.S.C. § 1367(b) because, among other reasons, RID had its primary place of business in Alexandria, Virginia in this District and in this Division. At all times relevant, Nettles was employed by defendants in this District and in this Division.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

10. From the year 2000 until July 11, 2011, plaintiff served as Executive Director of RID.
11. Among his many job duties as Executive Director, plaintiff was responsible for the operations and management of staff and procedures at the RID national office, as well as any other tasks the RID Board of Directors might assign.
12. Among the more important tasks plaintiff was given was work on the official RID *Policies and Procedures Manual*. This work was always done at the direction of, in conjunction with, and subject to the approval of, the RID Board of Directors.
13. Section IV of the *Policies and Procedures Manual* states the purpose of the section as follows:
 - a. provide a uniform understanding and application of RID personnel policy and practice;
 - b. identify authority and responsibility for personnel policy and procedure administration;
 - c. standardize the handling of recurring personnel administration matters;
 - d. provide a working guide for the use in counseling employees, in training newly appointed supervisory personnel ...
14. Paragraph 3 of the *Policies and Procedures Manual* is entitled "Process to Amend the *Policies and Procedures Manual*" and states that:

The information contained within this manual has been approved by the board of directors. Recommended changes (additions, deletions, corrections) are forwarded to the national office for input into the document. A revised document is presented as frequently as often, ideally annually or more often, to the board for approval. Changes to this document require a majority vote of the board.
15. In addition, the *Policies and Procedures Manual* provides detailed, comprehensive rules for nearly every aspect of RID's day to day work.

**COUNT ONE—ERISA VIOLATIONS
(Failure to pay severance benefits under an ERISA plan)**

(Against RID, Moose and Prudhom)

16. All of the preceding paragraphs are included and realleged by reference, herein.
17. At all times relevant, defendant maintained a written plan which provided for severance payments to employees who were terminated under certain conditions.
18. The written plan establishing severance payments to employees terminated under certain conditions is found in the RID *Policies and Procedures Manual*.
19. The *Policies and Procedures Manual* promulgated by RID was the responsibility of the Bylaws Committee of the RID Board of Directors. The Manual was first adopted in 1980, and major subsequent revisions took place, including but not limited to those in 1993, 1995, 2000, and 2002.
20. Section IV of the *Policies and Procedures Manual* is titled "National Office Personnel Policies." According to the Manual, the purpose of section IV is to: provide a uniform understanding and application of RID personnel policy and practice; identify authority and responsibility for personnel policy and procedure administration; standardize the handling of recurring personnel administration matters; provide a working guide for the use in counseling employees, in training newly appointed supervisory personnel; and, to provide an established point-of-reference in reviewing, revising and determining the need for improving existing personnel policies, procedures, and practices.
21. In 2005 the entire manual was reviewed and each RID Board Member was assigned a specific section to study. A number of changes were made to the manual in the 2005 revisions, including substantive changes to the subsection containing the severance pay policy.

22. These changes were, like all changes to the *Policies and Procedures Manual*, made at the behest of and reviewed and approved by the RID Board of Directors.

23. In particular, subsection IV(G)(14) which is found on page 115 of the *Policies and Procedures Manual* is titled "Severance Pay" and provides as follows:

Severance pay is not available to employees who are dismissed for reasons related to misconduct as an employee, including violations of RID policies. Full-time employees who have completed at least one year of full-time employment with RID and who are laid off because of cutbacks or reductions in staff, or terminated involuntarily for reasons not connected with misconduct, are entitled to severance pay calculated at the rate of one week of pay for every full year of employment for up to five years of employment; and two weeks of pay for every full year of employment for more than five years but less than ten years of employment, three weeks of pay for every full year of employment for more than ten years but less than 15 years of employment; and four weeks of pay for every full year of employment for more than 15 years of employment ...

24. The above-referenced section of the *Policies and Procedures Manual* was, like all sections, prepared at the request of the RID Board of Directors, reviewed by the RID Board of Directors and approved by a majority vote of the RID Board of Directors.

25. The severance plan created by subsection IV(G)(14) was designed by the RID Board of Directors to provide monetary benefits to RID employees terminated under certain conditions.

26. The severance plan created by subsection IV(G)(14) was incorporated in the *Policies and Procedures Manual* so that a reasonable person could ascertain the intended benefits to be paid (i.e., severance pay for those terminated under certain conditions) and ascertain whether he or she was within the intended class of beneficiaries and under what conditions the benefit would be paid.

27. The severance plan created by subsection IV(G)(14) among other portions of the *Policies and Procedures Manual* was therefore an employee welfare benefit plan as defined by ERISA.
28. The severance plan created by subsection IV(G)(14) of the *Policies and Procedures Manual* was a benefit of employment followed for other RID employees who were terminated for reasons other than misconduct.
29. In early 2008, RID employee Pam Jones was terminated from her employment and was paid severance according to the terms of the RID plan. Ms. Jones had at the time of her termination been employed by RID for 10 years, and was accordingly given 15 weeks of severance pay.
30. Other employees who were terminated from their employment for reasons other than misconduct were also given severance pay pursuant to the requirements of subsection IV(G)(14).
31. On July 11, 2011, Nettles was asked to attend a meeting with Moose and incoming Board President Brenda Walker Prudhom. The stated purpose of the meeting was to discuss Nettles' annual employee evaluation.
32. Because Moose's flight was delayed, she arrived at the meeting late. Nettles met with Prudhom and RID lawyer Steven John Fellman.
33. At that meeting, Prudhom and Fellman told Nettles that his employment was being terminated because the RID board had "decided to move in a different direction."
34. At all times relevant to this Complaint, Nettles performed his work in a manner that met or exceeded the legitimate expectations of his employers. Nettles received regular increases in pay and good performance appraisals during his employment.

35. Nettles was terminated from his employment under conditions which met the requirements for payment of his severance benefit under the written terms of the ERISA plan maintained by defendants.
36. Despite the existence of this ERISA plan and despite Nettles' qualification for benefits, Nettles was denied his ERISA benefit.
37. The ERISA benefit provided by RID was created by and controlled by the RID Board of Directors, including Moose and Prudhom. Moose and Prudhom controlled the administration of the ERISA plan and were personally responsible for the decision to deny Nettles his ERISA severance benefit.
38. As a result of the foregoing, plaintiff has been damaged, and therefore requests relief in the form of his denied severance benefit pursuant to ERISA, as well as his reasonable attorney's fees and costs pursuant to 29 U.S.C. § 1132(a)(1)(B).

**COUNT TWO—BREACH OF EMPLOYMENT CONTRACT
(Failure to provide 180 days of salary in lieu of notice period)
(Against RID)**

39. All of the preceding paragraphs are realleged and reincorporated by reference.
40. In 2009, Nettles and defendant negotiated the terms of a written employment agreement.
41. In March of 2010, that agreement was finalized and agreed upon in writing.
42. Among the bargained-for consideration demanded by plaintiff and agreed to by RID was section 3 of the employment agreement.
43. Subsection 3(a) of the employment agreement provides that the agreement shall run from March 3, 2010 until June 30, 2014, unless terminated by either party pursuant to subsection 3(b).

44. Subsection 3(a) of the employment contract therefore provides for a term of a little over four years, unless terminated by either party pursuant to subsection 3(b).
45. Subsections 3(b)(i)-(vi) provide the specific conditions under which the employment contract may be terminated by either party prior to June 30, 2014.
46. More specifically, subsection (b)(iv) of paragraph 3 requires that RID provide plaintiff with a written termination notice at least 180 days prior to termination if the contract is terminated by RID for reasons other than cause.
47. Subsection (d)(iv) of paragraph 3 further provides that in lieu of 180 days notice, RID may give plaintiff 180 days of pay and other benefits at the time it terminates his employment contract, so long as the termination is for reasons other than "cause."
48. In other words, in order to terminate plaintiff's employment for reasons other than "cause" RID was required to give him 180 days written notice prior to termination or alternatively to give him 180 days of pay at his full salary, as well as other benefits.
49. The term "cause" in the contract between the parties is defined in subsection (b) of paragraph 3 as:
- "... conduct by the Executive amounting to criminal conduct, fraud, dishonesty, malfeasance, gross negligence, gross incompetence; repeated public conduct contrary to the policies of the Association or that results in a material detriment to the Association or its members or is inimical to the Association, its reputation, and interests; or a material breach by the Executive of this Agreement, such breach which is not cured within thirty (30) days after written notice thereof from the Association to the Executive."**
50. The terms of the written agreement between plaintiff and RID were part of the consideration bargained for by Nettles, and without RID's promises in this regard Nettles would not have signed the employment contract and would not have continued to work for RID.

51. At all times, Nettles discharged the duties of his employment in a way that met or exceeded the legitimate expectations of his employers.
52. Despite Nettles' performance under the terms of the agreement, RID discharged Nettles on or about July 11, 2011 and refused to fulfill its obligations under the terms of the employment contract.
53. More specifically, RID told Nettles that it would require him to sign a complete release of all claims, including the ERISA claims brought in this complaint, if he wanted to receive the contractual benefits he was already entitled to receive and which RID was already obligated to provide.
54. There is no provision in the employment contract requiring Nettles to sign a release, and thus RID's failure to fulfill its obligations were in breach of Nettles' employment contract.
55. As a result of RID's breach, Nettles has been damaged.

**COUNT THREE—DEFAMATION
(Against RID, Moose and Prudhom)**

56. All of the preceding paragraphs are reincorporated by reference herein.
57. In September of 2010, Nettles and other employees of RID uncovered a conspiracy that RID employee Guy Motley had launched to embezzle money from and defraud RID.
58. Motley's criminal conspiracy, which began in January of 2010, was at all times secretive and covert; Motley took great pains to hide his scheme and to avoid detection by RID.

59. Additionally, Motley's scheme, which involved fraudulent payments and evaluations of applicants for RID certification, affected only three percent of the total tests rendered by RID during the period of Motley's fraud scheme.
60. When Motley's criminal conspiracy was detected, Nettles and other members of the RID staff took swift action to correct the situation. Those actions include, but are not limited to, hiring an outside auditing firm, notifying the appropriate law enforcement authorities, conducting and participating in both internal and external investigations, and other steps.
61. Ultimately, Motley pleaded guilty to criminal fraud and embezzlement, and was sentenced to one year in prison in late 2010.
62. During the period in which the fraud was being investigated (by contractors hired by RID and RID staff as well as by Virginia law enforcement authorities) the RID staff was careful to not alert its membership or the public at large about Motley's wrongdoing. Making such information public could have harmed the criminal investigation.
63. As soon as RID determined that it was acceptable to release the information, Nettles did so with the direction of the RID Board of Directors; the release of information was via a press release dated June 21, 2011.
64. The same day Nettles published his press release, RID President Cheryl Moose published a President's Report, stating that:

Executive Director Nettles managed the investigation and staff response, including the announcement to the RID membership, because it specifically and solely involved the operations and management of staff and procedures at the RID national office.

65. Nettles was at all times relevant to this case responsible for the operations and management of staff and procedures at the RID national office. Each and every intended recipient of Moose's report would have understood that.

66. Moose's report continued as follows:

Because of our commitment to a resolution that would be fair to the affected candidates as well as to the consumers of interpreting services, we ensured that Executive Director Nettles kept us apprised of all of the investigative matters and processes from the onset of the discovery last September.

67. The report also states that:

While we [i.e., the RID Board of Directors] have determined that the impact on RID and its members is very limited, we take this fraud extremely seriously and are working diligently to resolve the issues this incident has raised.

68. Throughout her President's Report (including but not limited to the sentences above) Moose draws a distinction between "us" and "we" (i.e., the RID Board of Directors) and Nettles.

69. When Nettles was terminated Prudhom and Fellman told Nettles that his employment was being terminated because the RID board had "decided to move in a different direction."

70. At Nettles termination meeting no mention was made of Motley's fraud or the investigation or anything related to Nettles' performance..

71. At the meeting, Nettles was told that although his employment was being terminated, if he signed a letter of resignation which RID had prepared and signed a complete release of all claims against RID, he could represent to the public that he had resigned from his employment.

72. RID also provided Nettles with a draft letter of recommendation from Moose; Nettles was told at the meeting that if he waived all of his claims against RID and signed the letter of resignation Moose would sign the letter of recommendation.
73. Nettles was given 72 hours to consider this ultimatum. He was told that if he did not sign the complete release of all claims and if he did not sign the letter of resignation within 72 hours, he would lose the option of doing so.
74. Nettles declined to sign the release of all claims on July 14, 2011. If he had signed the release, he would have waived important rights, including his right to ERISA benefits complained of in Count One of this complaint.
75. Almost immediately after Nettles declined to sign the release agreement, Moose published a notice on RID's website which included the following:
- It has been an honor and privilege to serve as President of the Registry of Interpreters for the Deaf (RID) for the past four years. Much of the last decade of my career and my life have been dedicated to service on the RID Board of Directors and during all of that time, RID has been under the direction and leadership of Executive Director, Clay Nettles.**
- After 18 years of service, the RID Board of Directors has decided to terminate Executive Director Clay Nettles effective July 14, 2011.**
76. Read together, Moose's communications of June 21, 2011 and July 14, 2011 implied that Nettles was involved in Motley's criminal activity or that he was somehow negligent in his supervision of Motley or that he was somehow responsible for the fraud committed by Motley.
77. The two communications together were a direct or implied assertion that Nettles was unfit for to be Executive Director of RID and that he was unfit for his chosen profession. The communications were therefore defamatory *per se*.

78. These communications, among others, were intended to assert that Nettles was unfit for his chosen profession, and were indeed understood that way by those members of the public interested in the affairs of RID.

79. For example, within hours of Moose's communication of July 14, 2011, author Michael Doyle published the following on his website www.videointerpret.com:

Atlanta conference CRASH...Clay Nettles (Executive Director) is FIRED from RID...

Right before the RID national conference in Atlanta, a couple difficult and damaging events were announced involving the discovery of a RID employed NIC test rater who was running his own certification operation from within or dare I say, right under RIDs' alleged secure, trusted and "ethically approved" testing paradigm of "you're good to go", PLEASE just keep it quiet on how you got your cheated NIC level ! ...and Clay, HIT THE ROAD

80. After clicking on the link described above videointerpret.com/news/news.html has the following:

Need an easy legit NIC certification ?

Talk to that Guy at RID, and Clay Nettles...YOU'RE FIRED !

This Guy Motley (RID Certification and Education Specialist) must have had alot of good friends (Clay?) prior to and during his "honorable service" as a NIC test rater at RID.

Upon reviewing RIDs announcement on their website complete with membership communication from President Cheryl Moose and the now EX-Executive Director Clay Nettles of FAQs and a press release, this "talk to me, I'll set you up" NIC certification process through "that Guy" has now exposed more than meets the eye.

By RIDs own admission in these communiques to "Allow for an enhanced rater payment process" , what exactly were the motivating factors to Guys deceitful NIC escapade?

It now becomes obvious the RID was shortchanging anyone/everyone who was a NIC test rater AND that after a costly internal and external 9 month investigation, things at RID are NOT so "clean and tidy".

In fact on July 14, RID president Cheryl Moose TERMINATED Clay Nettles, the Executive Director of 18 years at RID.

So, whats GOING ON !?!?!?

MORE TO COME ON THIS HISTORIC CRASH AT RID...

81. Two days after defendants published the second defamatory statement, RID held its National Conference in Atlanta, Georgia.
82. The timing and the wording of the public information complained of above was also understood by other members of RID to implicate Nettles in the wrongdoing of Motley.
83. After the Conference an RID member called Nettles at home and expressed concerns that one or more individuals at the conference had given the impression that Nettles was involved in Motley's fraud.
84. This RID member also stated that the June 21, 2011 and July 14, 2011 communications had, considered together, given him and others the impression that Nettles was unfit to be Executive Director of the organization and had participated either by omission or commission in Motley's crimes.
85. A number of RID members and attendees at the conference came away with the impression that Nettles was in jail; these rumors circulated in the community, giving the impression that Nettles was a criminal and was unfit to manage and lead RID or any other organization.
86. On August 31, 2011, as a result of the actions of RID, the RID Board of Directors issued a further e-News report. The report, authored by Prudhom, stated as follows:

Also, related to this topic, RID Board of Directors and the national office have heard rumors that Clay Nettles was terminated because he was directly connected to the fraudulent scoring of the NIC Interview and Performance Examination. That is simply not true. Clay Nettles was in no way connected to the schemes of Guy Motley to embezzle funds from RID. Nor is Clay in jail. Mr. Motley is currently serving a year-long jail sentence for these criminal actions.

87. Moose, Fellman, and Prudhom had given Nettles the option to represent to the public that he resigned—however, Nettles was offered that option if and only if he signed a complete release of all claims and if he signed the resignation letter provided to him.
88. If he had signed this release and the resignation letter Nettles would have lost a valuable ERISA severance benefit worth well over \$100,000.
89. Moose, Prudhom and RID did not wish to pay the ERISA severance benefit and were angry when Nettles did not choose that option.
90. The wording and the timing of Moose and Prudhom's public communications about Nettles' termination provides proof that the defamatory acts complained of in this Complaint were retaliatory, intentional and willful, and were undertaken in a spirit of mischief and ill-will.
91. The publication of defendants' defamatory and malicious attacks on plaintiff posed and continues to pose a substantial danger to the reputation of plaintiff and his career prospects.
92. As a result of the defamation of the defendants, numerous individuals in the deaf community were under the impression that Nettles was involved (either directly or indirectly) in the crimes of Guy Motley; other individuals were given the impression that Nettles was in prison.
93. Nettles has therefore suffered damage to his personal and professional reputations, as well as to his esteem in the eyes of his colleagues and others, making an award of presumed damages appropriate.
94. As a result of the actions of the defendants complained of above, Nettles has suffered lost earnings past, present, and that which he may reasonably be expected to suffer in

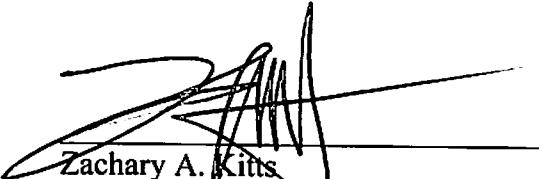
the future; loss of earning capacity; out-of-pocket expenses, and other damages, making an award of compensatory damages appropriate.

95. The actions of the defendants were willful, wanton and reckless and were motivated by personal animosity, actual malice, personal spite, hatred, and ill-will, making an award of punitive damages appropriate.

96. Nettles therefore asks this Court to enter judgment in an amount to be determined at trial; alternatively, Nettles requests any other relief the Court may deem appropriate.

97. Nettles demands a Jury Trial on Counts Two and Three.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Zachary A. Kitts', is written over a horizontal line. The signature is stylized and somewhat illegible.

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