

Fired attorney wins \$1.3 million verdict

by David Donovan

Published: January 4th, 2013

When Waverly Partners, a Charlotte-based executive headhunting firm, reached out to attorney Shawn Smith about a position it was trying to fill, she says she warned them that her job would be in jeopardy if her supervisors found out she was interviewing for other jobs.

It turned out she was right.

Smith lost her job when the company running Waverly's background check tried to verify her current employment. She says she never gave the company permission to contact her employer. Now, Waverly is on the hook for over \$1.3 million in lost wages after a federal jury found in Smith's favor on her breach of contract charges against the company.

Waverly contacted Smith, then general counsel and corporate secretary for the Cato Corporation, in November 2007 about a position it was trying to fill in Nashville. After a series of discussions, Smith signed a consent form that allowed Waverly to verify, among other things, her "past employment," but said that her job would be in jeopardy if her supervisors found out she was interviewing elsewhere.

Shortly thereafter, the background investigator that Waverly hired sent a copy of the form to Cato to verify Smith's employment, and Smith was swiftly terminated from her position just as the economy was about to crater. The company where Waverly was trying to place Smith ultimately chose another candidate, and Smith filed suit against Waverly for lost wages.

At trial, Waverly argued that Smith had given it permission to conduct a background check. Smith countered that the plain language of the authorization limited the check to "past employers." She said Waverly had exceeded the scope of its authority, and a jury in the U.S. District Court for the Western District of North Carolina agreed after less than 90 minutes of deliberation.

Cato's HR director testified at trial. He confirmed that the company had fired Smith specifically because she was interviewing for other jobs, and testified about the amount of compensation she could have expected to receive otherwise. The jury awarded the full \$1.382 million Smith had sought, although the award will be discounted by the amount of the severance package she received from Cato.

Meg Maloney, Audrey Page and Tamara Huckert of Maloney Law & Associates in Charlotte represented Smith. Kenneth Raynor of Templeton & Raynor in Charlotte represented Waverly Partners.

Maloney described Smith as "a very talented woman at the top of her game" who was not able to find a similar position after being terminated during a historic recession. At Smith's age, the longer she spent time out of work, the more difficult it became to find a comparable position, and Smith ultimately had to switch careers, Maloney said.

Maloney said she was surprised that Waverly did not present any live testimony at trial, saying it seemed to her that the company did not take the risk of a verdict against them seriously. She said she was especially pleased with the verdict given that the jury panel was composed of people who said they had never had a period of unemployment. It turned out not to be an impediment, though.

"I think this is just common sense and common decency that you don't out a candidate to their current employer," Maloney said. "It was a serious breach of confidentiality."



Follow David Donovan on Twitter @NCLWDonovan or email david.donovan@nclawyersweekly.com

VERDICT REPORT

Breach of Contract

Injuries Alleged: Lost wages and compensation

Name of case: *Smith v. Waverly Partners, LLC*

Court: Western District of North Carolina

Case number: 03:10-cv-00028

Tried Before: Jury

Judge: Richard Voorhees

Date of verdict or settlement: Sept. 19, 2012

Amount: \$1,382,062.88

Highest Offer: Less than \$10,000

Attorneys for plaintiff: Meg Maloney, Audrey Page and Tamara Huckert of Maloney Law & Associates in Charlotte

Attorney for defendant: Kenneth Raynor of Templeton & Raynor in Charlotte

Has the plaintiff been successful in collecting the judgment? Post-trial motions pending

Complete URL: <http://nclawyersweekly.com/2013/01/04/fired-attorney-wins-1-3-million-verdict/>