

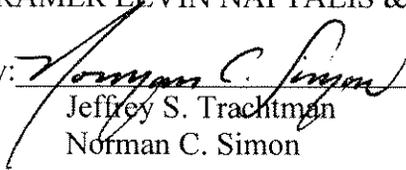
Dated: New York, New York
July 21, 2005

LAMBDA LEGAL DEFENSE & EDUCATION
FUND, INC.

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To:

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plans that regularly cover the spouses of retired District employees. The District and the other Defendants named in this complaint wrongfully have denied Plaintiff these benefits in violation of their statutory, regulatory, contractual, and common law obligations, and in contravention of Plaintiff's right to equal protection under the New York State Constitution.

Parties

2. Plaintiff Duke L. Funderburke is a resident of the State of New York. Plaintiff was employed by the District as a certified teacher for over twenty years, until he retired in 1986.

3. Upon information and belief, Defendant New York State Department of Civil Service ("DCS") is responsible for administering New York State's health insurance plans for public employees and retirees.

4. Upon information and belief, Defendant Daniel E. Wall ("Mr. Wall") is President of DCS. Mr. Wall is sued in his official capacity only.

5. Upon information and belief, Defendant Robert W. DuBois ("Mr. DuBois") is Director of the Employee Benefits Division of DCS. Mr. DuBois is sued in his official capacity only.

6. Upon information and belief, Defendant Uniondale Union Free School District is a validly constituted public school district under New York law.

7. Upon information and belief, Defendant William K. Lloyd ("Mr. Lloyd") is the Superintendent of Schools for the District. Mr. Lloyd is sued in his official capacity only.

8. Upon information and belief, Defendant Lawrence D. Blake ("Mr. Blake") is the Assistant Superintendent for Business Affairs for the District. Mr. Blake is sued in his official capacity only.

9. Upon information and belief, Defendant Myrtle E. Dickson (“Ms. Dickson”) is the Director of Personnel for the District. Ms. Dickson is sued in her official capacity only.

Facts

Defendants’ Obligation to Provide and Practice of Providing District Employees and Retired District Employees with Spousal Health Insurance

10. Upon information and belief, the District has elected to participate in the New York State Health Insurance Program (“NYSHIP”), a health insurance plan created pursuant to, and governed by, the New York Civil Service Law and related New York state regulations.

11. By electing to participate in NYSHIP, the District is bound, pursuant to N.Y. Civil Service Law § 164 and N.Y. Comp. Codes R. & Regs. tit. 4, § 73.1, to provide its employees and eligible retired employees, as well as the spouses of its employees and eligible retired employees, with health insurance coverage. In using the term “spouse,” the New York Civil Service Law and related regulations make no distinctions based on the sex or sexual orientation of the parties to a marriage.

12. DCS, through its Employee Benefits Division and its officers and agents, is bound to administer the NYSHIP in accordance with the provisions of the Civil Service Law and the regulations duly promulgated thereunder.

13. In furtherance of its statutory and regulatory obligations to provide such coverage, the District has entered into a collective bargaining agreement with the Uniondale Teachers Association (the “UTA”), the exclusive union representative of all certified teachers employed by the District, under which the District is obligated to make payments toward the premium for the State Health Insurance Plan for each teacher. Under the NYSHIP program, the District is

obligated to provide the same benefits to eligible retired employees and their spouses as are provided to employees and their spouses.

14. As a retired employee of the District, Plaintiff is an intended beneficiary of the collective bargaining agreement between the District and the UTA, and therefore is entitled to and does receive health insurance benefits from the District.

15. The NYSHIP allows enrollees, which include employees and retired employees of the District, to choose from among a variety of health plans. One of these is the Empire Plan, which is exclusively available to participants in NYSHIP and is administered by DCS. Under the Empire Plan, covered parties receive, *inter alia*, hospital coverage, medical and surgical benefits, mental health services, and prescription drug coverage.

16. Enrollees in the Empire Plan are entitled to spousal coverage.

17. Plaintiff currently is enrolled in the Empire Plan.

18. In addition to the NYSHIP, the District also provides its employees and retired employees with several supplemental forms of health coverage. These include, but are not limited to: (a) additional medical insurance benefits through The First Rehabilitation Life Insurance Company of America, the District's provider of group excess medical insurance, and (b) dental benefits through the District's Self Insured Dental Plan (collectively, the "District Supplemental Health Plans").

19. Upon information and belief, the District Supplemental Health Plans provide for spousal coverage of employees and retired employees.

20. Plaintiff currently is enrolled in the District Supplemental Health Plans.

Plaintiff's Marriage and New York's
Marriage Recognition Rule

21. Plaintiff and Bradley L. Davis ("Mr. Davis") have been partners in a committed relationship for over forty years. Plaintiff is 72 years old and Mr. Davis is 68 years old. They have lived together since 1963 and have been financially interdependent since that time.

22. On October 27, 2004, Plaintiff and Mr. Davis were validly married in the province of Ontario, Canada. Ontario allows non-residents of Canada to marry and allows same-sex couples legally to marry on the same terms as different-sex couples.

23. Pursuant to New York's common law rule governing the treatment of marriages entered outside of New York, marriages that were validly performed in foreign jurisdictions must be fully respected under New York law, even if they could not be entered into in New York, except in narrow circumstances not applicable here, such as polygamous or closely related incestuous marriages. In an official Opinion dated March 3, 2004, the Attorney General of the State of New York has stated that, under the New York's marriage recognition rule, "New York law presumptively requires" that same-sex couples married in other jurisdictions "must be treated as spouses for purposes of New York law."

24. Based on this well-established marriage recognition rule and governing case law, Plaintiff's marriage to Mr. Davis must be treated by Defendants as valid under New York law.

Defendants' Unlawful Refusal
to Respect Plaintiff's Marriage

25. On or about October 29, 2004, Plaintiff notified the District of his marriage and requested that his coverage under the Empire Plan and District Supplemental Health Plans be amended to provide his spouse with medical, excess medical, and dental benefits.

26. On or about December 20, 2004, the District refused Plaintiff's request, asserting that "same-sex marriages" would not be recognized "for the purpose of spousal coverage."

27. On or about December 22, 2004, Plaintiff responded to the District's denial of Plaintiff's request through a letter seeking information about the basis of the District's rejection of Plaintiff's request for spousal coverage.

28. The District responded to Plaintiff's inquiry, through its attorneys, by letter dated January 14, 2005. In his letter, the District's counsel wrote, "The District is not required to provide health insurance to same-sex spouses or to domestic partners. As such, the District has elected not to provide coverage to these individuals. Therefore, Mr. Funderburke's request for spousal coverage shall continue to be denied."

29. In response to further inquiry on behalf of Plaintiff, the District's counsel reiterated the District's position through a letter to Mr. Davis dated March 3, 2005. The letter stated, in relevant part, that "the District maintains its position that such spousal coverage is not permitted pursuant to its benefit policies and will not be granted at this time."

30. On March 15, 2005, Plaintiff, through his attorneys, served upon Defendants the District, Mr. Lloyd, Mr. Blake and Ms. Dickson, a verified Notice of Claim, wherein Plaintiff averred that the "District's refusal to recognize [his] valid Canadian marriage and provide benefits to [his] same-sex spouse under the dependency coverage provisions of the District's health plans violates the District's contractual, statutory and regulatory obligations, common law, and the state constitutional guaranty of equal protection."

31. On April 20, 2005 — after more than thirty days had passed since Plaintiff's service of the Notice of Claim and Plaintiff had neither received nor been offered the relief he

requested — Plaintiff filed his Complaint in this matter against the District and individual Defendants Mr. Lloyd, Mr. Blake and Ms. Dickson.

32. On June 13, 2005, the originally named Defendants moved to dismiss the complaint or, in the alternative, to compel the addition of necessary party defendants, including DCS. In support of their application, the originally named Defendants provided an affidavit from the District's Insurance Office Account Clerk, who averred that, upon receiving Plaintiff's application, she contacted DCS and was informed "since same-sex marriages are not statutorily permitted in New York State, that DCS would not provide dependent spousal coverage in NYSHIP to same-sex spouses of eligible employees and retirees. . . ."

33. Based on this new information, Plaintiff has amended his complaint to add DCS, Mr. Wall and Mr. DuBois as additional Defendants.

34. Defendants' refusal to provide benefits to Plaintiff's spouse has caused Plaintiff to incur additional expenses for health and dental care. Defendants' actions have also caused Plaintiff intangible harm by failing to treat his marriage with the respect accorded to marriages of different-sex couples.

Claims for Relief

First Cause of Action

Violation of the New York Civil Service Law and Regulations

(Against All Defendants)

35. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 34, above, as though set forth fully herein.

36. Defendants' refusal to provide benefits to Plaintiff's spouse violates those provisions of and regulations promulgated under the New York Civil Service Law, including

N.Y. Civil Service Law § 160, *et seq.*, and N.Y. Comp. Codes R. & Regs. tit. 4, § 73.1, which mandate health insurance coverage for an eligible retired employee's spouse.

Second Cause of Action
Denial of the Right to Equal Protection
Under the New York State Constitution

(Against All Defendants)

37. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 36, above, as though set forth fully herein.

38. Article I, Section 11, of the New York State Constitution provides that “[n]o person shall be denied the equal protection of the laws of this state or any subdivision thereof.”

39. Defendants deny married same-sex couples, including Plaintiff and his legal spouse, certain benefits that are extended to married different-sex couples, including, but not limited to, spousal health and dental coverage. In doing so, each and every one of the Defendants has discriminated against Plaintiff on the basis of sexual orientation and sex, without sufficient justification, in violation of Plaintiff's state constitutional right to equal protection.

Third Cause of Action
Breach of Contract

(Against the District, Mr. Lloyd, Mr. Blake, and Ms. Dickson)

40. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 39, above, as though set forth fully herein.

41. Defendants the District, Mr. Lloyd, Mr. Blake, and Ms. Dickson, have refused to provide coverage for Plaintiff's spouse under the Empire Plan and District Supplemental Health Plans in breach of the District's obligations to Plaintiff under the District's collective bargaining agreement with the UTA and, on information and belief, the District's past practices and policies.

Prayer For Relief

WHEREFORE, Plaintiff respectfully requests that this Court grant him the following relief:

1. Declare that Plaintiff's marriage to Mr. Davis is legally entitled to respect under New York law, and that the actions of each and every one of the Defendants in causing the denial of Plaintiff's application for spousal health coverage violates common law, the New York Civil Service Law and regulations, the District's contractual obligations to Plaintiff pursuant to the District's collective bargaining agreement with the UTA and its past practices and policies, and Plaintiff's right to equal protection under the New York State Constitution;
2. Enjoin each and every one of the Defendants to cease denying Plaintiff, in violation of Defendants' legal obligations, the spousal health coverage to which Plaintiff is entitled;
3. Award Plaintiff against each and every one of the Defendants compensatory damages caused by Defendants' breach of their obligations to Plaintiff;
4. Award Plaintiff his attorneys' fees and costs; and
5. Provide Plaintiff such other relief as the Court deems just and proper.

Dated: New York, New York
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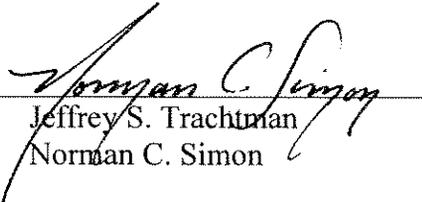
Respectfully submitted,

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