

Retaliation Claim Against Carter Ledyard's Client Dismissed

April 02, 2025

On March 28, 2025, Kings County Justice Aaron Maslow granted a pre-answer motion to dismiss retaliation claims filed by a former supervising pharmacist against Carter Ledyard clients, a specialty pharmacy that provides sterile and non-sterile compounded pharmaceuticals and the pharmacy owner. The former employee sued under New York's recently expanded whistleblower statute, New York Labor Law section 740.

The pharmacist alleged that his work burden grew too much in the weeks after a staff pharmacist resigned, but the pharmacy did not employ a new pharmacist fast enough. He argued that his complaints to the pharmacy about having to fill in multiple roles constituted protected whistleblower conduct since his position involved public safety. He also argued that even though he sent a voluntary resignation email one month after the staff pharmacist resigned, the court should view his departure as a constructive discharge because a replacement pharmacist had not yet been hired.

Justice Maslow saw the case quite differently and agreed with Carter Ledyard's arguments that the pharmacist had no legal leg to stand on.

In an oral ruling, the court held that this was one of the rare fact-intensive cases that can be dismissed without discovery because the parties' emails referenced by the complaint told the whole story and demonstrated that the plaintiff had no claim. The plaintiff's allegations did not show any adverse employment actions taken by the pharmacy against him. Nor could he allege that he had actually engaged in protected conduct by complaining to his employer about some procedures at the pharmacy that he reasonably believed may constitute a violation of law. Rather than showing constructive discharge, Justice Maslow found that the parties' communications demonstrated that the pharmacy wanted to continue to retain the plaintiff, particularly under the circumstances of employee turnover.

Carter Ledyard partners **Jacob H. Nemon** and **A. Jonathan Trafimow** represented the defendants.

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