

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FERNE C. LABATI,
Plaintiffs,

Case Number:

06-22868CA 1F

vs.

UNIVERSITY OF MIAMI, a Florida
not for profit corporation,

Defendant.

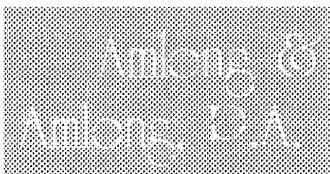
**Complaint - Jury
Trial Demanded**

Count I: Age Discrimination

Plaintiff, Ferne C. Labati, sues defendant, University of Miami, a Florida
not for profit corporation, and alleges:

Introduction

1. This is an age-and-gender discrimination complaint brought by
Ferne C. Labati, a 60-year-old woman whom the University of Miami fired as its
women's basketball coach less than a year after inducting her in 2004 into the
UM Sports Hall of Fame — and replaced her with a 37-year-old —
notwithstanding that Labati is the all-time leader in wins among basketball
coaches at UM, was the 2004 Women's Basketball Coaches Association Region
I Coach of the Year, and led her team to nine post-season tournaments, most



recently in 2003 and 2004. She sues pursuant to the Florida Civil Rights Act of 1992 for damages, including punitive damages, injunctive relief and attorney's fees and litigation expenses.

Jurisdiction

2. The amount in controversy exceeds \$15,000, exclusive of costs and interest. This court has jurisdiction to grant injunctive relief.

Venue

3. All parties either reside or are headquartered in Miami-Dade County, which is where the cause of action accrued.

Parties

4. Ferne C. Labati ("Labati") is a 60-year-old woman whom the University of Miami employed for 17 years as the head coach of its woman's basketball team.

5. University of Miami ("UM") is a Florida not for profit corporation with its principal place of business in Coral Gables, FL. UM employs 15 or more persons and, thus, is and was an "employer" as envisioned by § 760.02(7), FLA. STAT. (2005). It is sued for damages, including punitive damages, back pay and injunctive relief.

Satisfaction of Conditions Precedent

6. Labati on or about April 28, 2005 filed a Charge of Discrimination with the Florida Commission on Human Relations ("FCHR") concerning her termination. More than 180 days elapsed without the FCHR's either conciliating the charge or making a finding adverse to Labati.

General Allegations

7. Labati was qualified for her job as head coach of the UM women's basketball team:

a. She is the all-time leader in wins amongst basketball coaches at UM (men's or women's) — and No. 30 in the nation in wins amongst women's basketball coaches since the National Collegiate Athletic Association began keeping those statistics in 1982;

b. She was the 2004 Women's Basketball Coaches Association Region I Coach of the Year;

c. UM inducted her in 2004 into its Sports Hall of Fame;

d. She led UM women's basketball teams to nine post-season tournaments, most recently in 2003 and 2004;

e. The UM's website stated, as recently as April 8, 2005, "The University of Miami women's basketball program has become one of the most consistent programs in the country over the last 16 years. UM's success can be attributed to a woman who has guided the Hurricanes since 1988"; and

f. Labati's replacement, Katie Meier, stated during a woman's basketball teleconference October 25, in answer to a question from an Associated Press reporter, that Labati had run a "championship" program that was not "in shambles" and did not need "rebuilding."

8. Sometime in early March, Labati was interviewed on a campus radio show and was asked how long she planned to coach, to which she responded by saying that she felt great, was in great physical shape, intended to end her career at UM and mentioned several coaches who had continued coaching into their 60s and 70s.

9. Days later, on March 24, 2005, UM fired Labati, without warning, replacing her with Meier, 37.

10. Although Labati had a 13-16 2004-2005 season:

a. UM did not similarly fire Tricia Taliaferro, the 32-year-old fourth-year head coach of the women's soccer team, who acknowledged that her 2004 3-13 record was "embarrassing for everyone," and who followed that with another losing (8-11-1) season while still keeping her job;

b. Labati's 71-45 record for the four years prior to her being fired at age 59 (18-11, 18-12, 22-6 and 13-16) was better than the 61-54 record she had prior to her having contract renewed in 2001 at age 55 (19-10, 15-14, 14-15, and 13-15);

c. UM was aware that, because of its just having joined the Atlantic Coast Conference for the purpose of increasing revenue from the broadcast of football games, Labati's women's basketball team had faced what generally was regarded as the third most challenging schedule in the nation in the toughest conference in the nation;

d. UM was aware of injuries to key players, e.g., star forward Melissa Knight was out with a ruptured anterior cruciate ligament;

e. Even with a losing season, Labati's women's basketball program was still ranked 49th amongst the 328 in the nation based on an objective measurement index used throughout collegiate athletics, the National Collegiate Athletic Association's Rating Percentage Index — 30 places higher than the University of North Carolina at Charlotte, from where the UM hired her substantially younger successor; and

f. UM made no effort whatsoever to determine whether the team's 2004-2005 performance was attributable to Labati's recruitment efforts, any connection between the team's morale and Labati, or Labati's coaching style.

11. UM interviewed four finalists for Labati's former job, ranging in age from 35 through 44 — but would not even grant an interview to Cindy Russo, the 52-year-old coach at Florida International University whose 556 victories

since 1982 makes her the 13th most-winning women's basketball coach in the nation.

12. Section 760.10(1), FLA. STAT. (2005) provides in pertinent part:

It is an unlawful employment practice for an employer:

(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's ... sex [or] ... age...

(b) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's ... sex [or] ... age...

13. UM's behavior towards Labati was based on her age and thus, constituted age discrimination as proscribed by § 760.10(1), FLA. STAT. (2005).

14. As a direct, natural, proximate and foreseeable result of the actions of UM, Labati has suffered past and future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

15. The discrimination against Labati, of which discrimination UM's higher management was aware and which discrimination it ratified, was in such reckless disregard of Labati's statutory rights against discrimination as to entitle Labati to an award of punitive damages.

16. The age discrimination that Labati is suffering, in violation of her statutory right to be free if such discrimination, constitutes irreparable harm for which there is no adequate remedy at law.

17. Labati is entitled to recover reasonable attorney's fees and litigation expenses against UM pursuant to § 760.11(5), FLA. STAT. (2005).

Relief Sought

WHEREFORE, Labati prays that this court will:

One, issue a declaratory judgment that UM's practices towards Labati violate Labati's rights against age discrimination under the FCRA;

Two, enjoin UM, its management employees and/or agents to cease discriminating against Labati because of her age, to make her whole through reinstatement and restoration of benefits and seniority, or, if that is not practical, through an award of front pay;

Three, enter a judgment for Labati and against UM for damages, including punitive damages;

Four, grant Labati her costs and a reasonable award of attorney's fees pursuant to the § 760.11(5), FLA. STAT. (2005); and

Five, grant Labati such other and further relief as the circumstances and law require and/or provide.

Count II: Gender Discrimination

18. Plaintiff, Ferne C. Labati, adopts and realleges, as if they were fully set forth in Count II, the allegations of ¶¶ 1-10 and 12.

19. Although Labati had a 13-16 2004-2005 season, UM did not similarly fire men's basketball coach Perry Clark until after he suffered two consecutive losing seasons, i.e., 11-17 in 2002-2003 and 14-16 in 2003-2004.

20. UM's behavior towards Labati was based on her gender and thus, constituted gender discrimination as proscribed by § 760.10(1), FLA. STAT. (2005).

21. As a direct, natural, proximate and foreseeable result of the actions of UM, Labati has suffered past and future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

22. The discrimination against Labati, of which discrimination UM's higher management was aware and which discrimination it ratified, was in such reckless disregard of Labati's statutory rights against discrimination as to entitle Labati to an award of punitive damages.

23. The gender discrimination that Labati is suffering, in violation of her statutory right to be free of such discrimination, constitutes irreparable harm for which there is no adequate remedy at law.

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Four, grant Labati her costs and a reasonable award of attorney's fees pursuant to the § 760.11(5), FLA. STAT. (2005); and

Five, grant Labati such other and further relief as the circumstances and law require and/or provide.

Demand for Jury Trial

Plaintiff, Ferne C. Labati, demands trial by jury on all issues so triable.

Respectfully Submitted,

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