

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT DEPARTMENT
C.A. NO.: 2177CV00572

WILLIAM FAHEY,
Plaintiff,

v.

ANDREW FLANAGAN, Individually and as
Manager for the TOWN OF ANDOVER
Defendants.

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RECEIVED

7/9/2021

**DEFENDANTS' ANSWER TO PLAINTIFF'S
VERIFIED COMPLAINT AND JURY DEMAND**

The first and second un-numbered paragraphs of the complaint contain a purported summary of its allegations. To the extent any answer is required, the summary of allegations is denied. The defendants further state that the summary is false. Plaintiff William Fahey ("Fahey" or "plaintiff") was not dismissed from his position as Director of the defendant Town of Andover's Andover Youth Services division ("AYS") based on any alleged "targeting" or "vendetta" by the defendant Town Manager. He was dismissed because serious allegations were reported alleging misconduct by him in his dealings with an AYS program participant and the participant's family. The defendants retained an investigator to investigate the allegations. She interviewed witnesses, including Fahey, and reviewed other evidence. The investigator issued a report which made detailed findings that Fahey had engaged in inappropriate conduct. Those findings were corroborated by other witnesses, including Fahey's own admissions, and by other evidence, including Fahey's own text messages. Fahey had already been disciplined for failing to properly supervise and discipline an AYS employee who had engaged in inappropriate conduct with two teen-aged AYS program participants. The defendants terminated Fahey's employment based on the report's findings and on their fundamental obligation to protect the safety and welfare of AYS program participants and their families, consistent with the grounds for termination in his employment contract.

FIRST DEFENSE

The complaint fails to state a cause of action against the defendants upon which relief can be granted.

SECOND DEFENSE

The defendants answer the complaint, paragraph by paragraph, as follows:

PARTIES

1. The defendants admit the allegations contained in this paragraph.
2. The defendants admit the allegations contained in this paragraph.
3. The defendants admit the allegations contained in this paragraph.

JURISDICTION AND VENUE

4. The allegations contained in this paragraph state a conclusion of law to which the defendants need not respond.
5. The allegations contained in this paragraph state a conclusion of law to which the defendants need not respond.

FACTS

6. The defendants admit only that Fahey was hired by the Town in 1994 and assisted in forming Andover Youth Services and worked for that agency until his termination. Otherwise, the defendants are without information sufficient to affirm or deny and call on plaintiff to prove the same. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
7. The defendants admit the allegations contained in this paragraph.
8. The defendants admit that in 2019 the defendant Town Manager filed a petition in the Department of Labor Relations to sever several Town managerial positions from the bargaining unit, including Fahey's, and that the Association and the Town then negotiated and reached an agreement to sever these positions. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
9. The defendants state that the document speaks for itself. To the extent the allegations allege that the defendants acted wrongfully, they are denied
10. The defendants state that the document speaks for itself. To the extent the allegations allege that the defendants acted wrongfully, they are denied
11. The defendants state that the document speaks for itself. Defendants admit only that the cell phone and the cell phone number both are owned by the Town, that they were used by Fahey in his conduct of his duties as a Town employee, and that they were obtained from Fahey as part of a reasonable investigation of his workplace conduct. To the extent the allegations allege that the defendants acted wrongfully, they are denied.

12. The defendants admit only that the Director of Community Services met with AYS full-time staff and told them that Fahey was on leave. Otherwise, denied, and to the extent the allegations allege that the defendants acted wrongfully, they are denied.
13. The defendants admit the allegations contained in this paragraph.
14. The defendants admit the allegations contained in this paragraph.
15. The defendants state that the Ryan report speaks for itself. Further answering, the defendants state that the District Attorney's Office explicitly referred the matter to the defendant Town, which then initiated an investigation. To the extent the allegations allege that defendants acted wrongfully, they are denied.
16. The defendants admit only that the Town-owned cell phone used by Fahey to conduct his duties was integral to the reasonable investigation of Fahey's workplace conduct; that the investigation concerned whether Fahey's interactions with AYS program participants, including those by cell phone, were conducted appropriately; that Fahey had already deleted numerous text messages from the phone; that return of the phone was properly denied because its return before the investigation concluded would have interfered with the investigation and would have been inappropriate; and that, given the findings of the investigation, return of the phone after its conclusion would have been improper and could have risked the health and welfare of AYS program participants. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
17. The defendants state that the document speaks for itself. Further answering, the defendants state that Fahey was well aware of the investigation because the investigator interviewed him. Otherwise, the defendants are without information sufficient to affirm or deny and call on plaintiff to prove the same. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
18. The defendants state that the document speaks for itself. Further answering, the defendants state that the document also referred to the report's findings of several other specific categories of misconduct by Fahey involving AYS program participants. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
19. The defendants state that the document speaks for itself. Further answering, the defendants state that the proper conduct of Fahey's duties in dealing with vulnerable program participants and families was not limited to merely avoiding "criminal or sexual misconduct". To the extent the allegations allege that the defendants acted wrongfully, they are denied.
20. The defendants admit only that the defendant Town Manager required the NDA because the report contains specific and inherently private information regarding AYS program participants and their families and because Fahey had no legitimate reason to disclose that information to persons other than his counsel. To the extent the allegations allege that the defendants acted wrongfully, they are denied.

21. The defendants admit the allegations contained in this paragraph.
22. The defendants admit the allegations contained in this paragraph.
23. The defendants admit only that a redacted copy of the report was produced to Fahey's counsel so that he could determine the scope of the report and the appropriateness of the NDA without putting counsel in the position of having all the information but withholding it from his client; and that Fahey's personnel file was produced. Otherwise, the defendants are without information sufficient to affirm or deny and call on plaintiff to prove the same. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
24. The defendants admit the allegations contained in this paragraph
25. The defendants admit the allegations contained in this paragraph
26. The defendants state that the document speaks for itself. Further answering, the defendants deny that the letter's allegations of "flaws, deficiencies, and incorrect facts" had any merit; deny that the Ryan report found that all of the allegations by the "original source" were not credible; and state that the report found several such allegations corroborated, including by Fahey's own admissions. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
27. Denied. Further answering, the defendants incorporate in full by reference the answer to paragraph 26, above.
28. The defendants state that the document speaks for itself. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
29. The defendants state that the document speaks for itself. Further answering, the defendants state that the letter catalogues inappropriate conduct by Fahey with AYS program participants beyond that referenced in the allegation and deny that Fahey was not given an opportunity to respond to the report. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
30. The defendants deny the allegations contained in this paragraph.
31. The defendants state that the documents referred to speak for themselves. Further answering, the defendants state that Fahey's own text messages show that he was providing unlicensed counseling to participants and their families. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
32. Defendants admit only that the complainant brought allegations regarding Fahey to Sobhan Namvar, who is Community Support Coordinator with the Town's police department; that because the allegations involved possible criminal activity by a Town employee, the allegations were reported by the Police Department to the Office of the Essex County

District Attorney; that the initial investigation was conducted by the Office of the District Attorney, who conducted an interview of the complaining witness; and that ultimately the District Attorney's Office did not initiate a criminal prosecution but that it also explicitly referred the matter to the defendant Town. To the extent the allegations allege that the defendants acted wrongfully, they are denied.

33. The defendants state that the document speaks for itself. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
34. The defendants state that the document speaks for itself. Further answering, the defendants state that, as Fahey is well aware, in 2017 he was suspended after an investigation determined that he had failed to properly supervise an AYS employee despite multiple incidents and that he had failed to protect AYS program participants from such incidents. Otherwise, denied.
35. The defendants state that the document speaks for itself. Further answering, the defendants state that the NDA was necessary to prevent Fahey from improperly disclosing or misusing the inherently private information in the report regarding program participants and their families. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
36. Denied. Further answering, the defendants state that the report substantiates numerous transgressions by Fahey in his dealings with AYS program participants and their families, including Fahey's own text messages with such persons and his own admissions.
37. The defendants deny that report is "flawed" or that its findings lack "support". Further answering, the defendants state that report contains ample support for its findings, including Fahey's own admissions and text messages; that the investigation was proper in scope because when the investigator interviewed the original complainant, she was provided with allegations regarding Fahey's conduct which went beyond the original complaint and which required investigation; and that there is no such entity as the "AYS Foundation Board", but that there is a private non-profit 501(c)(3) entity called the Andover Youth Foundation, Inc. which is not a Town entity and which has no legal authority to control the work performed by Town employees, such as those employed by AYS. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
38. The defendants deny the allegations contained in this paragraph.
39. Denied. Further answering, the defendants state that, as Fahey is well aware, his personnel file contains the 2017 suspension; that while Fahey's position was in the bargaining unit the matter of evaluations was a term and condition of employment that by law had to be negotiated with the Association; that such an agreement was never entered into between the Association and the defendant Town; and that Fahey was on notice following the 2017 suspension that the defendant Town would not tolerate a violation of professional boundaries by AYS employees with program participants and their families.

Fahey was Targeted by Flanagan

40. The defendants admit the allegations contained in this paragraph.
41. The defendants deny the allegations and state that the Cormier Youth Center has always been under the control of the Town Manager and is used by citizens of the Town for appropriate activities. Further answering, defendants state that, pursuant to Section 10 (f) of the Town Charter and pursuant to Section 4.1 of the Town's Grant Agreement with the Andover Youth Foundation, the Cormier Youth Center is, and always has been, under the sole jurisdiction and control of the Town Manager and not under the jurisdiction and control of Fahey, and that the Grant Agreement specifically provides for an allocation of time and space to other Town, School, and community activities.
42. The defendants admit only that the defendant Town Manager made statements about the use of the Youth Center that are consistent with the Grant Agreement and that his intent was, and is, fully consistent with the Town Charter and the Grant Agreement with the Andover Youth Foundation. Otherwise, denied.
43. The answers to paragraphs 41 and 42, above, are incorporated in full by reference. The defendants deny that any statements by Fahey as alleged were accurate or that there is a "contract between the Town and the Cormier Youth Center."
44. The defendants deny that the defendant Town Manager failed to support AYS and admit only that Fahey has in fact been difficult to work with. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
45. The defendants deny that Fahey has ever asked for a meeting with the defendant Town Manager. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
46. The defendants admit only that the defendant Town Manager reorganized the reporting structure of the Town's service divisions including AYS, Veterans Services, Elder Services and Recreation; that Fahey and the other Directors therefore did not directly report to the Town Manager because the Town Manager receives regular updates from the Director of Community Services relating to the AYS; and that the defendant Town Manager therefore does not deal directly with AYS staff. To the extent the allegations allege that the defendants acted wrongfully, they are denied.

2017 Suspension

47. The defendants admit only that, as the result of an investigation commenced in Summer 2017, the Town Manager learned that in Summer 2015 Fahey had been informed that an AYS employee under his supervision had engaged in an improper relationship with a just-graduated student at Andover High School. Otherwise, the defendants are without

information sufficient to affirm or deny and call on plaintiff to prove the same. To the extent the allegations allege that the defendants acted wrongfully, they are denied.

48. The defendants admit only that, during an investigation commenced in Summer 2017, the Town Manager learned that Fahey claimed that in Summer 2015 he had suspended the employee and allegedly had restricted his duties upon return to work in September 2015 to moving AYS's functions to the new Youth Center; that in fact, and contrary to Fahey's account, the employee's payroll records show that he took vacation and unpaid leave, and was returned to the AYS payroll on August 10, 2015; and that there was no record in the employee's file showing suspension, leave, or any restriction in duties. Otherwise, the defendants are without information sufficient to affirm or deny and call on plaintiff to prove the same. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
49. The answer to paragraph 48, above, is incorporated in full by reference. Further answering, the defendants state, based on the 2017 investigation, that the employee did not "resign[] ... in early 2016"; that in December 2015 it was brought to Fahey's attention that a minor student at the high school had complained that the same employee was pursuing the student through personal texts; that high school staff verified the allegations, including the texts; that despite this Fahey took no action; that the employee continued to have contact with teen-aged AYS program participants; and that the employee left AYS in May 2016 to take a new job elsewhere. Otherwise, the defendants are without information sufficient to affirm or deny and call on plaintiff to prove the same. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
50. The answers to paragraphs 48 and 49, above, are incorporated in full by reference. Further answering, the defendants state that until Summer 2017 neither the defendant Town Manager nor the Town's Director of Community Services to whom Fahey reported had any knowledge regarding the 2015 incidents involving the employee or Fahey's failure to properly supervise him in order to protect AYS program participants, until they were told that the employee had returned to the Town and had a "history"; that an investigation was promptly and properly commenced to determine the facts; and deny that the defendant Town Manager told Fahey's union representative that Fahey had the option to either resign or be terminated. Otherwise, the defendants are without information sufficient to affirm or deny and call on plaintiff to prove the same. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
51. The answers to paragraphs 48-50, above, are incorporated in full by reference. Otherwise, the defendants are without information sufficient to affirm or deny and call on plaintiff to prove the same. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
52. The defendants admit only that the defendant Town Manager properly determined that Fahey's failure to properly supervise the employee or to protect teen-aged AYS program participants warranted discipline and that sufficient precautions were required to prevent a repetition of the conduct. Otherwise, denied.

53. The defendants incorporate in full by reference the answer to paragraph 52, above, and admit only that Fahey signed the agreement after receiving counsel from the union and its attorney. Otherwise, the defendants are without information sufficient to affirm or deny and call on plaintiff to prove the same. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
54. The defendants admit only that following the execution of the agreement, the Andover Police Department obtained sign-in sheets showing that the employee who Fahey had failed to properly supervise had signed in to middle schools for AYS during the 2015-2016 school year despite the restrictions Fahey claimed he had imposed; and that Fahey was properly placed on leave pending investigation. Otherwise, to the extent the allegations allege that the defendants acted wrongfully, they are denied.
55. The defendants deny the allegations contained in this paragraph.
56. The defendants admit only that in 2019 the defendant Town Manager determined that several managerial positions were not appropriate for union representation under G.L. chapter 150E; that these positions were removed from the bargaining unit through negotiation and agreement with the union rather than proceeding on a petition in the Department of Labor Relations; and that one of the positions was that held by Fahey. Otherwise, denied.
57. Denied. Further answering, the defendants state that in Fiscal Year 2020, after Fahey and other town division heads became non-union employees, Fahey received a 2% general wage increase; that in Fiscal Year 2021, the defendant Town instituted a 1% voluntary deduction known as the unfunded liability offset (ULO) that almost all town employees, including management, non-union, and union employees, contribute to; that this deduction is intended to address the town's unfunded liabilities; that all employees were offered the choice of accepting the voluntary deduction or opting out of the deduction and waiving their general wage increase for that year; that Fahey did not respond to multiple messages seeking his answer on whether he accepted the ULO provision, and that he therefore was not granted a general wage increase for Fiscal Year 2021; but that all other non-union employees chose to accept the voluntary deduction.
58. The defendants deny the allegations contained in this paragraph.
59. The defendants are without information sufficient to affirm or deny and call on plaintiff to prove the same. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
60. The defendants are without information sufficient to affirm or deny and call on plaintiff to prove the same. To the extent the allegations allege that the defendants acted wrongfully, they are denied.

COUNT I - BREACH OF CONTRACT
(v. the Town of Andover)

61. The defendants hereby repeat and incorporate in full by reference their answers to paragraphs 1 through 60 of the complaint.
62. The defendants state that the employment contract speaks for itself. To the extent the allegations allege that the defendants acted wrongfully, they are denied.
63. The defendants deny the allegations contained in this paragraph.
64. The defendants deny that Fahey was wrongfully terminated, that they acted wrongfully, or that they are liable for any of the alleged damages. The defendants are without knowledge and information sufficient to form a belief as to the truth of the remaining allegations and call on plaintiff to prove the same.
65. The defendants deny that Fahey was wrongfully terminated, that they acted wrongfully, or that they are liable for any of the alleged damages. The defendants are without knowledge and information sufficient to form a belief as to the truth of the remaining allegations and call on plaintiff to prove the same.

COUNT II - BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING
(v. the Town of Andover)

66. The defendants hereby repeat and incorporate in full by reference their answers to paragraphs 1 through 65 of the complaint.
67. The defendants deny the allegations contained in this paragraph.
68. The defendants deny the allegations contained in this paragraph.
69. The defendants deny the allegations contained in this paragraph.

COUNT III - DEFAMATION OF CHARACTER
(v. Flanagan Individually)

70. The defendants hereby repeat and incorporate in full by reference their responses to paragraphs 1 through 69 of the complaint.
71. The defendants deny the allegations contained in this paragraph.
72. The defendants deny the allegations contained in this paragraph.
73. The defendants deny the allegations contained in this paragraph.
74. The defendants deny the allegations contained in this paragraph.

75. The defendants deny the allegations contained in this paragraph.

**COUNT IV - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(v. Flanagan Individually)**

76. The defendants hereby repeat and incorporate in full by reference their responses to Paragraphs 1 through 75 of the complaint.

77. The defendants deny the allegations contained in this paragraph.

78. The defendants deny the allegations contained in this paragraph.

79. The defendants deny the allegations contained in this paragraph.

**COUNT V - INTENTIONAL INTERFERENCE WITH ADVANTAGEOUS
CONTRACTUAL/BUSINESS RELATIONS
(v. Flanagan Individually)**

80. The defendants hereby repeat and incorporate in full by reference their responses to Paragraphs 1 through 79 of the complaint.

81. The defendants admit the allegations contained in this paragraph.

82. The defendants deny the allegations contained in this paragraph.

83. The defendants deny the allegations contained in this paragraph.

84. The defendants deny the allegations contained in this paragraph.

WHEREFORE, the defendants deny that the plaintiff is entitled to judgment in any amount against the defendants and ask this Honorable Court to enter judgment for the defendants and against the plaintiff along with interests, costs and attorneys' fees.

AFFIRMATIVE DEFENSES

AFFIRMATIVE DEFENSE NO. 1

The defendants were privileged in all their conduct and acts regarding Fahey, and, therefore, the plaintiff cannot recover.

AFFIRMATIVE DEFENSE NO. 2

The defendant Town Manager's statements are protected by a privilege to make statements regarding an important public issue such as the termination of Fahey for his conduct in performing his duties as Director of AYS.

AFFIRMATIVE DEFENSE NO. 3

The defendants were justified in all their acts and/or conduct regarding Fahey and, therefore, the plaintiff cannot recover.

AFFIRMATIVE DEFENSE NO. 4

The defendants acted at all times in good faith.

AFFIRMATIVE DEFENSE NO. 5

With respect to Count III, any statements made by the defendant Town Manager were true.

JURY CLAIM

THE DEFENDANTS CLAIM A TRIAL BY JURY AS TO ALL ISSUES PROPERLY TRIABLE TO A JURY.

Respectfully submitted,

Defendants,
Andrew P. Flanagan, Individually and as
Manager of the Town of Andover,
By their attorneys,



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Dated: July 9, 2021

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this document was filed through the eFileMA system on July 9, 2021 and copies will be sent electronically to registered participants. True copies will otherwise be served upon any attorneys of record who are not listed on the eFileMA system by email only on July 9, 2021.



Leonard H. Kesten, BBO # 54202

