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Buffalo Denied Win In Fight With Firefighter Axed For Med. Pot

By **Sam Reisman**

Law360 (September 29, 2022, 5:17 PM EDT) -- A New York state judge on Thursday denied the city of Buffalo a quick win in its legal battle with a terminated firefighter and medical cannabis patient who brought legal action to get his job back.

While denying the city's bid for summary judgment, Justice Catherine R. Nugent Panepinto did not rule on Scott Martin's original petition to have his firing overturned and his employment with the Buffalo Professional Firefighters Association reinstated.

During the 90-minute hearing in New York Supreme Court, Erie County, attorneys for Martin and the city wrangled over the scope and limitations of New York's Compassionate Care Act, the 2014 statute that legalized medical marijuana, and whether it provided job protection for a patient in a safety-sensitive role, even if he did not come to work intoxicated.

David Holland, an attorney for Martin, argued congressional spending riders approved by federal lawmakers each year since 2014, which bar federal prosecutors from targeting compliant medical cannabis operators, effectively made the Controlled Substances Act a dead letter, at least with respect to medical marijuana patients.

"To sit here and say [medical cannabis] is illegal is a truism of no value because the law is not enforceable at this time in New York with regard to the compliant actions of patients and medical operators in the space," Holland told the court.

Conversely, Michael Risman, counsel for the city of Buffalo, asserted that the language of the Compassionate Care Act carved out numerous exceptions and asked the court how such exceptions could be interpreted in a manner that allowed a firefighter to use a federally unlawful substance.

Holland told the court Martin was using medical cannabis for years without issue before the drug test was administered that precipitated his firing in February 2021.

Current available marijuana tests only indicate if a person has a cannabis metabolite in their system, which can remain in the body for weeks after marijuana use. The tests cannot show if a person is acutely under the influence.

According to court documents, Martin told the test administrator that he was a certified medical marijuana patient but was fired pursuant to the city's agreement with the firefighters' union, which outlined disciplinary procedures for workers who tested positive for drugs.

After the hearing, Holland told Law360 the case asks apparently novel questions about whether certain rights — specifically, those of New York's certified medical marijuana patients — can be traded away as part of a union's contract with an employer.

"We're glad we had our opportunity to correct the record as to what happened to Scott Martin, the relief he's looking for, and the protections that exist for New York state patients, whether they're subject to a collective bargaining agreement or not," he said.

Martin originally filed his petition in May 2021, alleging he was unlawfully fired after a random drug test in December 2020. He is seeking full reinstatement and back pay. The petition is still pending.

Buffalo's counsel told Law360 on Thursday that his client believed the case was procedurally defective, noting that Martin did not file an administrative complaint, and observed that the court had not yet ruled on the merits. "We feel the petition has no merit and should be dismissed," Risman said.

Martin is represented by David Holland of Prince Lobel.

Buffalo is represented by Michael Risman of Hodgson Russ.

The case is Scott Martin v. City of Buffalo et al., case number 805903/2021, in the Supreme Court of the State of New York, County of Erie.

--Editing by Janice Carter Brown.

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