

Cop Gets \$4M Bias Verdict Affirmed With \$1M Atty Fee

By **Chris Villani**

Law360 (May 24, 2023, 6:06 PM EDT) -- A Massachusetts judge has upheld a \$4.3 million jury verdict for a trailblazing police detective who said she was subjected to years of gender discrimination, taking the total up to \$5.7 million when he awarded her attorneys from Burns & Levinson LLP more than \$1 million in fees, plus interest.

Middlesex Superior Court Justice John P. Pappas, in an order entered Tuesday, denied the town of Watertown's bid for a new trial and to reduce the seven-figure sum awarded to Kathleen Donohue following a November jury trial.

The town made numerous post-trial motions, asking Justice Pappas to set aside the verdict, order a new trial, or at least trim the damages and eliminate the jury's \$1 million punitive damages award, all of which were denied.

Donohue, who was present during a shootout when officers tracked down one of the suspects in the Boston Marathon bombing, sued the town and claimed she had been passed over for promotions and endured years of lurid comments about her appearance and discriminatory treatment due to her gender and having children.

Justice Pappas said the panel that heard the case had enough evidence to find Donohue had proven her claims.

"The jury here could have found that the town's promotion of other, more junior male officers to detective over Donohue suggested discriminatory animus," Justice Pappas wrote in the 25-page memorandum. "They could have found that the town's assignment of Donohue to desk work as soon as she became pregnant — despite there being no medical necessity for such assignment — suggested discriminatory animus."

The jury also heard that, unlike other officers present when the marathon bombing suspect was arrested while hiding in a backyard boat in a Watertown neighborhood, Donohue was not given time off or provided with mental health services, the justice noted.

The jury also could have found, based on the evidence, "that Donohue was subject to continued and ongoing derogatory comments and rumors based on her gender, including that she was not fit to serve as a police officer because she was a woman," Justice Pappas wrote, adding "there was overwhelming evidence to support their award of punitive damages."

The justice did trim some of Burns & Levinson's fee bid, writing that Boston-area employment partners tend to earn less than the \$685 per hour that was requested. After similar haircuts for the fee bids for associates and interns, Justice Pappas awarded the attorneys \$1,009,620 for their work on the case.

Coupled with compensatory damages, future earnings, the \$1 million punitive damage sum and interest, the judgment totals \$5,754,089.57. Donohue's attorney, Ellen Zucker, told Law360 Wednesday the post-trial decision validates the jury's verdict and acknowledges the evidence they put forth in support of punitive damages.

"Det. Donohue — and those of us honored to serve as her counsel — are thrilled," Zucker said. "We hope that the town of Watertown has learned its lesson — and we hope that the case will help change the workplace for women in law enforcement in Massachusetts and beyond."

Zucker added that the verdict and subsequent ruling "serves as a sober reminder that discrimination — sometimes crass and in the open and sometimes in the stereotyped notions of how women should behave — should not be allowed to fester without consequence. It also serves as a cautionary tale for employers who turn a blind eye to the isolation and punishment employees too often confront for daring to speak up."

Attorneys for the town did not immediately respond to comment requests Wednesday.

In her complaint, Donohue noted she was the first female detective in the history of the Watertown Police Department.

One detective she worked with commented to her about his sexual exploits and referred to her in derogatory terms, she alleged, while another allegedly made repeated unwanted romantic advances and inappropriate comments to Donohue about her looks, told her sexually explicit jokes and, unsolicited, showed her photographs of his penis.

She said she was suspended following a disagreement with a superior officer, which she alleged was something that happened routinely and never resulted in that type of disciplinary action.

Donohue said she subsequently suffered a number of symptoms consistent with major depressive disorder and felt she could not return to work, but her application for injured-on-duty leave was denied, and she was ultimately removed from the town's payroll in April 2017.

Donohue is represented by Ellen Zucker, Christopher Wurster and Laura Studen of Burns & Levinson LLP.

Watertown is represented by Bradford Louison, Douglas Louison and Devin McDonough of Louison Costello Condon and Pfaff LLP.

The case is Kathleen Donohue v. Town of Watertown, case number 1981CV01472, in Middlesex County Superior Court.

--Editing by Philip Shea.