

Douglass | Kinniry Law, L.L.C.
424 Bethel Road
Somers Point, New Jersey 08224
Phone 609 788-3595; Facsimile 609 788-3599
Email: mjd@myrightslawyers.com
Attorneys for Plaintiff, Cristina Falisi

<p>CRISTINA FALISI, Plaintiff,</p> <p>vs.</p> <p>PHOENIX CONSULTING, L.L.C., DAN YONKER, BRYAN FALLUCCA Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION</p> <p>ATLANTIC COUNTY</p> <p>Docket No.</p> <p>Civil Action</p> <p>COMPLAINT AND JURY DEMAND</p>
---	--

Cristina Falisi, residing in Atlantic County, New Jersey, says by way of Complaint against the Defendants as follows:

Preliminary Statement

Plaintiff was employed as a Project Manager for Phoenix Consulting for close to a decade. A woman in a predominantly male field, Plaintiff was accustomed to subtle forms of sexism—e.g. Plaintiff was provided with a lesser vehicle than her male co-workers; at times, Plaintiff was subject to negative comments and “jokes” about women from her co-workers. However, for the most part, Plaintiff enjoyed her work and was good at it, earning praise from clients and colleagues alike. It was common knowledge that Plaintiff was slated to assume to her supervisor, Bryan Fallucca’s position so that the owner of the company, Dan Yonker, could cut back his hours.

However, everything changed when Plaintiff questioned the ethically questionable billing practices of her male supervisor, Bryan Fallucca. Suddenly, Plaintiff found herself the target of a

relentless campaign of harassment and bogus criticisms of her work. Finally, Plaintiff was effectively terminated—removed from her position as Project Manager (replaced by a less qualified male employee) and demoted to a part-time desk job at a fraction of her former salary. Defendants’ stated reasons for the demotion are two-fold. First, Plaintiff’s boss, Dan Yonker, was aware of the conflict between Plaintiff and Fallucca and told Plaintiff that he couldn’t have his “Number 1” fighting with his “Number 2.” Accordingly, Yonker turned a blind eye to Fallucca’s ethical indiscretions and harassment of Plaintiff, and demoted Plaintiff as a means to appease Fallucca. Defendants’ second stated reason for demoting Plaintiff was that she was unable to handle the stress of the position. But, in light of Plaintiff’s years of experience, coupled with the fact that her own boss considered her his “Number 2,” this rationale simply does not ring true. Instead, it is mere pretext designed to hide the real reason for Plaintiff’s termination—sex discrimination. Plaintiff seeks relief for Defendants’ illegally discriminatory conduct under New Jersey Law Against Discrimination.

The Parties

1. Plaintiff Cristina Falisi was employed as a Project Manager for Phoenix Consulting from September 2004 until she was wrongfully terminated in December 2013.
2. Defendant Phoenix Consulting, LLC is an environmental consulting firm that specializes in managing environmental claims for homeowners’ insurance companies.
3. Defendant Dan Yonker is the founder and owner of Phoenix Consulting.
4. Defendant Bryan Fallucca is a Senior Project Manager at Phoenix Consulting and Plaintiff’s former supervisor.

Statement of Facts

5. In or around August 2004, Plaintiff hired as a Project Manager for Phoenix Consulting; she began working the following month.
6. As Project Manager Plaintiff's duties consisted of evaluating sites to determine coverage under the various homeowners' policies; determining the scope of work if coverage was provided to remediate the site to the applicable standards; retaining contractors; securing and reviewing contractors' costs estimates; preparing and submitting comprehensive proposals to the insurance carrier/adjuster for review and approval; coordinating the remediation schedule with contractors and homeowners; and overseeing the remediation process and tracking costs/billing. Plaintiff also performed soil and groundwater sampling, drafting of reports, and training of other employees.
7. Defendant Bryan Fallucca served as Plaintiff's direct supervisor.
8. Until May 2013, Plaintiff enjoyed a positive working relationship with Fallucca, communicating frequently to discuss projects, workload, remedial strategies and other work-related issues. Fallucca told Plaintiff he valued her opinion and referred to her as his "sounding board." Fallucca involved Plaintiff in the hiring and training of new employees and Plaintiff acted as his back-up when he wasn't available.
9. Fallucca often commended Plaintiff on her work performance. During her time at Phoenix Consulting, Plaintiff was not subject to any performance or attendance based discipline or negative evaluations. Instead, she received praise for her competency and dedication to the work. (**Exhibit A**, December 7, 2005 handwritten note from Dan Yonker)

10. Of four (4) project managers—including Bryan Fallucca, Phil Mastranduono, Evan Jones —Plaintiff was the only woman.
11. Plaintiff noticed that she was treated differently. For example, Plaintiff was provided a much smaller vehicle than all the other Project Managers. Plaintiff complained that the vehicle did not have ample cargo space in which to transport the various materials and equipment Plaintiff often used when on a site. However, no action was taken to provide Plaintiff with a more suitable vehicle.
12. Plaintiff was also subject to negative comments and stereotypical assumptions about women.

Plaintiff Questions Excessive Billing Practices

13. On or about May 9, 2013, Plaintiff observed that her supervisor, Bryan Fallucca, had billed excessively on one of Plaintiff's projects.
14. On that day, Fallucca called Plaintiff to tell her he was at one of Plaintiff's job sites in order to deliver tomato plants to Marilyn Reilly, an adjuster for USAA, one of the insurance companies Phoenix works for. Fallucca's trip was purely for personal reasons. There was no other reason for him to be on the site. While he was there, he asked Plaintiff if she wanted him to take some photographs of the site because there was a construction concern that needed to be documented. Plaintiff was already aware of the issue, had notified the proper parties, and intended to visit the site herself within the next few days. Regardless, Fallucca took nine photos and emailed them to Plaintiff later that night with a short description as to each one.
15. Plaintiff became suspicious that Fallucca would bill extra time on Plaintiff's job in order to account for his time delivering tomato plants to Marilyn.

16. Sure enough, Plaintiff asked officer manager Beth Cabot if Fallucca had submitted a Time and Materials (T&M) sheet for the job; Cabot confirmed that he had.
17. Beginning on or about May 13, 2014, Plaintiff exchanged several emails with Fallucca about the T&M sheet. Fallucca responded, admitting that he had been at the site to drop off the plants, but tried to justify his time he billed. Plaintiff pressed the point: Fallucca had only been at the site for personal reasons. Taking the photographs was an afterthought. (**Exhibit B**, May 2013 email exchange between Plaintiff and Fallucca.)
18. During the email exchange, Fallucca became agitated and defensive. At one point, he told Plaintiff that he could barely continue reading her emails.
19. Not wanting to ruin their working relationship, Plaintiff let the matter drop. However, that email exchange was the last they had, with the exception of a few emails months later when Fallucca attempted to demonstrate several negative performance issues on the part of Plaintiff in an effort to get her fired.
20. After the excessive billing incident, Fallucca no longer called or emailed Plaintiff directly. (Although he would, out of necessity include her on large company-wide email chains.) However, nearly all direct communication between the two of them ceased.
21. Fallucca also began excluding Plaintiff from projects that they had previously been working on together. Plaintiff believed that Fallucca's exclusion of her would pass, but after several months the silent treatment persisted.
22. Fallucca's actions impacted Plaintiff's ability to carry out her job responsibilities. For instance, in or around June 2013, Plaintiff communicated via email with a case

manager from the New Jersey Department of Environmental Protection (NJDEP). Apparently, the case manager had been contacted by Fallucca, who had been discussing Plaintiff's projects with other co-workers and outside parties—instead of Plaintiff. Prior to the May 2013 billing incident, Fallucca would speak to Plaintiff directly about her projects without reaching out to the NJDEP on her behalf.

Fallucca Begins to Implement a Plan to Terminate Plaintiff

23. On or around August 2013, Fallucca began to implement a plan to terminate Plaintiff.
24. On or about August 15, 2013, Dan Yonker sent an email to Plaintiff's group, asking them to verify a company project list. (Several years prior, Fallucca had asked the project managers to update a group project list on a monthly basis so that he could keep track of job statutes. However, the list had last been updated in 2010 and the practice had essentially been abandoned.) Plaintiff suspected that she was about to be terminated and that Fallucca and Yonker wanted a list of all the projects she was working on so that they could be assigned to other project managers.
25. Beginning in or around August 2013, Fallucca and Yonker began papering Plaintiff's personnel file with bogus and/or false performance-related issues.
26. During this time period, Plaintiff was experiencing a significantly heavy workload: she was working two large remediation cases that required her to spend significant time in the field, i.e., away from her home office. Plaintiff had also been assigned several new projects, also requiring substantial time in the field, and was scheduled to appear in court to testify as to one of the company's past projects.

27. Periods of field-heavy work, when it was more difficult for project managers to submit timely T&M reports, were not uncommon. All of the other project managers routinely struggled to keep on top of their paperwork after long hours in the field.
28. As always, Plaintiff emailed Beth Cabot that she would be sending over certain completed reports—which she did.
29. However, there was one report that Plaintiff did not send because she knew from speaking to the contractor that he had not yet submitted his billing. Without the billing, Plaintiff’s T&M report for that project would be useless. Since Plaintiff only had limited time at her office, she focused on the reports that would be immediately ready to be sent to billing.
30. On or about September 4, 2014, Yonker emailed Plaintiff regarding this one outstanding report and threatened to withhold her pay. (Yonker did not acknowledge the reports that Plaintiff had completed but focused solely on the one she didn’t do, which, was still of no use to Phoenix without the contractor’s own billing report.) Yonker indicated that the contractor’s bill had been “sitting on his desk” and he was waiting for Plaintiff’s T&M report, but as of a few days prior, the contractor had not submitted their bill.
31. Again, it was inevitable that project managers would fall behind on paperwork. During this same time period, Phil Mastranduno specifically expressed to Plaintiff how far behind he was on his own reports.
32. Beth Cabot routinely sent emails to all the project managers, reminding them to submit their reports. If Cabot needed a specific report more quickly, she would call

the project manager to ask for it directly. In her nearly ten years at Phoenix, this had always been the practice.

33. The tone of Yonker's email, coupled by his failure to acknowledge the host of reports she had submitted, further confirmed Plaintiff's suspicion that she was being set up to fail.

34. Simply put, Plaintiff was again singled out from her male counterparts.

35. Also on or about September 4, 2013, Yonker and Fallucca abruptly changed company policy relating to project emails. Whereas before, Plaintiff would only copy Fallucca on certain USAA related emails, now Yonker wanted Fallucca copied on all of Plaintiff's USAA projects.

36. Fallucca justified the change by stating that USAA adjuster, Marilyn Reilly, had "concerns" about several of Plaintiff's projects. Plaintiff found this hard to believe. In the past, Reilly had always contacted her directly if she had concerns about a project or she would contact Fallucca and he would discuss with Plaintiff. If there had really been issues that needed to be addressed, why would Fallucca not bring them to her attention as Project Manager? Plaintiff suspected the new email procedure was put in place to that Fallucca could track Plaintiff's projects and then manage them once Plaintiff was terminated.

Phoenix Hires Plaintiff's Replacement

37. On or about October 8, 2013, Plaintiff emailed Yonker in order to verify certain new projects. Yonker did not respond until on or about the 15th.

38. On or about October 9, 2013, Yonker sent an email notifying all Phoenix employees that he had hired a new project manager, Mike Strauss. On or about October 15,

2013, Yonker responded to Plaintiff's prior email; he stated that several of the new projects that were initially Plaintiff's responsibility were now being assigned to Strauss.

39. On or about October 10, 2013, Plaintiff attempted to discuss with Yonker the breakdown of her working relationship with Fallucca. It was clear from the conversation that Fallucca had relayed certain information to Yonker. However Yonker shut Plaintiff down and refused to hear her version of events surrounding the billing issue. He said he "didn't need to hear" the details but also couldn't have his "number 1 and number 2 people not talking." Plaintiff stated that she was open to having a sit-down meeting with Fallucca and Yonker, however this never occurred.
40. Plaintiff reached out to Yonker several times after their October 10 conversation in an effort to resolve the issue involving Fallucca, yet Yonker failed to take any action.
41. Instead, Yonker asked Plaintiff if she wanted to change positions within the company. Plaintiff flatly refused.
42. On or about November 13, 2013, Plaintiff emailed Yonker to inquire into new work assignments. When the company was busy, Plaintiff typically received one to three new claims per week. However, by November 2013, Plaintiff had not received a new claim in close to two months.
43. Yonker told Plaintiff that there was no new work available however Plaintiff knew this to be untrue, as she had checked the company data base and was aware that

they had received new claims. It was evident that Plaintiff was being phased out of her position.

Plaintiff is Terminated From Her Position as Project Manager

44. On or about November 21, 2013, Plaintiff traveled to Phoenix's main offices in Phoenixville, Pennsylvania for the purpose of having her company vehicle inspected. While in Phoenixville, Plaintiff planned on again approaching Yonker about the issue between herself and Fallucca.
45. Instead, Yonker said that he didn't want Plaintiff to work for him any longer. Yonker admitted that his decision was based in part on "the Bryan [Fallucca] issue." He also told Plaintiff she "couldn't handle the stress of the job."
46. Plaintiff defended herself against this statement: she routinely worked 50 to 55 hours per week and had historically received positive feedback from co-workers, insurance carriers, clients and others in the field.
47. And while Plaintiff was not immune to work-related stress, neither was she unusually susceptible. In the past she had taken over projects for co-workers and assisted others with their paperwork in order to alleviate their stress.
48. He presented her with three options: (a) Immediate termination; (b) Termination at the end of December; (c) Work through the end of December and then accept a demotion to the position of part-time technical writer.
49. Plaintiff did not want to be relegated to the position of technical writer—a desk job. Plaintiff liked being in the field working with the contractors. She knew she could do the work and that Yonker was only creating reasons to justify her termination.

50. In fact, prior to the May 2013 billing incident, Plaintiff had been slated to assume Fallucca's position, allowing Fallucca to take on more of Yonkers job duties so that he could work less.
51. Plaintiff also feared that if this rumor circulated—i.e. that she couldn't handle the stress—that it might harm her future job prospects within the close-knit, regional industry of environmental consulting.
52. On or about December 23, 2013, Yonker sent Plaintiff a formal termination and notice of subsequent employment offer. Plaintiff needed a paycheck and thus reluctantly accepted the technical writer position. (**Exhibit C**, December 23, 2013 Termination Letter, revised April 7, 2014)
53. In this new position, Plaintiff was responsible for writing Site Investigation Reports (SIR's), which are prepared for the insurance carriers to demonstrate the findings of investigations to determine if there is coverage. Plaintiff was also responsible for drafting site maps and preparing Remedial Action Reports (RAR's), which are submitted to the New Jersey Department of Environmental Protection to document remediations for site closures.
54. However, she was no longer in the field, no longer doing the worked she loved and was good at.
55. In 2013, as a Project Manager, Plaintiff had earned approximately \$92,000. (**Exhibit D**, Plaintiff's Salary and Bonuses, 2006-2014)
56. Plaintiff's loss of pay is substantial. As a technical writer, Plaintiff earned just \$32.50 per hour for a minimum of 20 hours per week. Plaintiff was diligent in requesting work in order to maximize her earned income. As of her last day of

employment, October 26, 2014, she had earned approximately \$46,500. (**Exhibit C**, December 23, 2013 Termination Letter, revised April 7, 2014)

57. Plaintiff started the new position in January 2014, reporting to an employee she had previously trained.

Plaintiff's Co-workers are Instructed Not to Communicate With Her

58. On or about August 8, 2014, Plaintiff was blind copied on an email from Phil Mastranduono to Fallucca and other Phoenix employees. Plaintiff later asked why she had been blind copied instead of copied. Phil replied that Yonker and Fallucca had made it “abundantly clear” that all communication with Plaintiff was to go through Chris DePaolis. The effect was to further isolate and exclude Plaintiff from her fellow coworkers.

59. Plaintiff recently resigned from Phoenix and is scheduled to begin a new job on October 27, 2014.

LEGAL CLAIMS

COUNT I

**VIOLATION OF NEW JERSEY’S LAW AGAINST DISCRIMINATION, N.J.S.A. 10:5-1 ET
SEQ.; SEX DISCRIMINATION**

60. The above paragraphs are incorporated herein as if set forth at length.
61. Pursuant to the New Jersey Law Against Discrimination (LAD), “All persons shall have the opportunity...to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation...without discrimination because of...sex[.] This opportunity is recognized as and declared to be a civil right.” N.J.S.A. 10:5-4.
62. The New Jersey Supreme Court has liberally construed the LAD to further the Legislature's broad remedial objectives. See Viscik v. Fowler Equip. Co., Inc., 173 N.J. 1, 13 (2002); see also N.J.S.A. 10:5-3 (“[T]his act shall be liberally construed in combination with other protections available under the laws of this State.”) Moreover, New Jersey courts have advised that “the more broadly [the LAD] is applied the greater its anti-discriminatory impact.” Ptaszynski v. Uwaneme, 371 N.J. Super, 333, 345 (App. Div.), certif. denied, 182 N.J. 147 (2004).
63. Here, as noted above, Defendants’ sex discrimination includes, but is not limited to: retaliation and harassment in response to Plaintiff’s questioning of unethical billing practices carried out by a male supervisor; scrutiny and micromanagement of Plaintiff’s work; singling Plaintiff out for performance-based criticism when the same conduct went unaddressed for male counterparts; demotion to a part-time position with significantly decreased salary and responsibilities; intentional

isolation from co-workers; inaccurate public assertions that Plaintiff was unable to manage the stress of the Project Manager position.

WHEREFORE, Plaintiff seeks damages to vindicate her rights under the laws and remedy the egregious loss and damages inflicted upon her by Defendants, including, but not necessarily limited to compensatory damages, emotional distress, bodily harm and injury, physical illness, economic damages, injunctive and equitable relief, and damages for the everyday -daily stress caused to Plaintiff by Defendants illegal acts, and reimbursement attorney's fees, multiplier and contingency fee enhancement award, and costs of suit, punitive damages and any other damages the Court deems fair and just.

DESIGNATION OF TRIAL COUNSEL

Michelle J. Douglass, Esq., is hereby designated as trial counsel in the above-captioned matter.

**CERTIFICATION OF NO OTHER ACTIONS PURSUANT TO
RULE 4:5-2**

I certify that the dispute about which I am suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

JURY DEMAND

The plaintiff hereby demands a trial by jury on all of the triable issues of this complaint, pursuant to New Jersey Court *Rules* 1:8-2(b) and 4:35-1(a).

DOUGLASS KINNIRY LAW, LLC
Attorneys for Plaintiff

By: _____

MICHELLE J. DOUGLASS, ESQ.

Date: October 30, 2014