

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA
2007 JUN 19 PM 1:07
LORETTA G. WHYTE
CLERK

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

ZEYNEL A. KARCIOGLU, MD.

*
*
*
*
*
*
*

CIVIL ACTION NO.

VERSUS

SECTION

07-3352

**THE ADMINISTRATORS OF THE
TULANE EDUCATIONAL FUND**

MAGISTRATE

SECT. A MAG4

COMPLAINT AND JURY DEMAND

COMES NOW Plaintiff Zeynel A. Karcioğlu, MD, through undersigned counsel, and files this complaint to obtain full and complete relief and to redress the unlawful employment practices described herein.

I. PRELIMINARY STATEMENT

1. This action for employment discrimination and breach of contract seeks declaratory, injunctive and equitable relief, back pay, liquidated damages, compensatory damages, attorney's fees, and costs for discrimination on the basis of age and breach of contract against the Administrators of the Tulane Educational Fund for its treatment of Zeynel A. Karcioğlu, MD.

Fee \$350.00
 Process
 Clerk
 Cir/Dep.
 Doc. No.

II. JURISDICTION

2. This action is brought pursuant to the Age Discrimination in Employment Act (ADEA) 29 U.S.C. §621 *et seq.*, the Louisiana Employment Discrimination Law, La.R.S. 23:301 *et seq.*, and the Louisiana law for breach of contract, including, but not limited to, La C.C. arts 1906, 1918, 1927, 1966, 1971, 1967, and 1978. Jurisdiction for the federal claims is invoked pursuant to 28 U.S.C. § 1331. Jurisdiction over the state claims is invoked via diversity jurisdiction under 28 U.S.C. § 1332 in that the controversy is between citizens of different States and the amount in controversy exceed the value of \$75,000.00, exclusive of interest and costs.

III. VENUE

3. This action properly lies in the Eastern District of Louisiana because the claims arose while Plaintiff was employed in Orleans Parish.

IV. PARTIES

4. Plaintiff Zeynel A. Karcioglu, MD, (hereafter referred to as “Dr. Karcioglu”) is a resident of the state of Tennessee. His date of birth is June 12, 1946. As of the date of filing this complaint he is 61 years of age.
5. The Administrators of the Tulane Educational Fund (hereafter referred to as “Tulane”) is a Louisiana non-profit corporation, whose domicile address is 300 Gibson Hall, 6823 St. Charles Avenue, Tulane University, New Orleans,

LA 70118.

V. FACTS

6. Dr. Karcioglu was employed in the School of Medicine at Tulane University, as a tenured professor and the holder of the George M. Haik, Sr. M.D., St. Giles Foundation Chair in Pediatric and Adult Ophthalmic Oncology (Haik Chair). He was terminated effective January 31, 2006.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

7. Dr. Karcioglu began working for Defendant in 1980 and was employed as a tenure track member of the faculty at Tulane University 1984.
8. In 1985, Dr. Karcioglu's tenure was approved by the Defendant, and Dr. Karcioglu was granted tenure.
9. At all times after being granted tenure until the date of his termination Dr. Karcioglu performed clinical services as an ophthalmologist, ocular oncologist and pathologist for the Defendant.
10. Dr. Karcioglu's tenure was never revoked or suspended.
11. In or about 1995, Dr. Karcioglu was nominated to occupy the / George Haik, Sr. / St. Giles Foundation. Endowed Chair in the Department of Ophthalmology (the "Endowed Chair").

12. This Endowed Chair was formed for the express purposes of scholarly work in ocular oncology.
13. The Endowed Chair's funding was matched by the Louisiana Endowment Trust Fund for Eminent Scholars.
14. Dr. Karcioğlu accepted the nomination to the Endowed Chair, and since being awarded the Endowed Chair, carried out the duties required of the chair-holder, namely the pursuit of scholarly work in the field of ocular oncology, which included seeing eye and orbit tumor patients in adults and children, examining eye pathology specimens and issuing pathology reports, teaching medical students, ophthalmology and pathology residents, writing scientific publications and books related to ophthalmic oncology and lecturing on the subject at regional, national and international medical meetings.
15. As Dr. Karcioğlu is board-certified in both pathology and ophthalmology, he was particularly qualified to pursue the work of the Endowed Chair, and from the time he was appointed to the Endowed Chair until his termination, Dr. Karcioğlu conducted research in ocular oncology, gave presentations, and published multiple papers and books in the field.
16. In December 1998 Dr. Karcioğlu received State Recognition for Exceptional

and Laudatory Contributions to Louisiana Higher Education.

17. A substantial portion of Dr. Karcioglu's salary and benefits were funded by the Endowed Chair.
18. The remainder of Dr. Karcioglu's compensation was derived from his medical practice of ophthalmology and pathology.
19. The proceeds of the Endowed Chair cannot be utilized for any purposes other than for the salary Chair-holder, and for other expenses directly related to the Endowed Chair's scholarly work.
20. Defendant notified Dr. Karcioglu by a telephone call on December 20, 2005 that due to an alleged "financial exigency" caused by Hurricane Katrina, he would be terminated.
21. No financial exigency existed with respect to Dr. Karcioglu or his position at the University, and by terminating Dr. Karcioglu, Defendant has breached the terms of Dr. Karcioglu's tenure and employment.
22. Dr. Karcioglu has been harmed by Defendant's breach in an amount no less than One Million Five Hundred Thousand (\$1,500,000.00) Dollars.

SECOND CLAIM FOR RELIEF
(Breach of Agreement as to Sabbatical Leave)

23. Plaintiff repeats and realleges paragraphs 1 through 22 above with the same

force and effect as if set forth in full herein.

24. On or about April 2005, Plaintiff and Defendant agreed that Dr. Karcioglu would take a Sabbatical Leave of absence.
25. The terms of the Sabbatical Leave were that Dr. Karcioglu would be paid one-half his regular compensation over a one year term, would receive his usual benefits during the Sabbatical, would remain a tenured full-time member of the faculty, and that he would work for no less than one year after returning from Sabbatical Leave.
26. Prior to returning from Sabbatical Leave, Dr. Karcioglu was terminated by Defendant due to alleged "financial exigency."
27. Nowhere in the agreement regarding Sabbatical Leave was any provision made regarding termination for financial exigency.
28. Due to Defendant's breach of this Agreement, Dr. Karcioglu has been damaged in an amount no less than Two Hundred Thousand (\$200,000.00) Dollars.

THIRD CLAIM FOR RELIEF
(Third Party Beneficiary Claim of Breach of
Terms of the Funding of the Endowed Chair)

29. Plaintiff repeats and realleges paragraphs 1 through 28 above with the same force and effect as if set forth in full herein

30. The Louisiana Board of Regents is a State body that allocates matching state-appropriated grants under Section 1 of Acts 1983, No. 668 of Louisiana Law, (the "Act.").
31. Subject to specified criteria governing the eligibility for participation in this program, the State of Louisiana, at the direction of the Board of Regents provides funds on a one to one-half matching basis (for example, the Board of Regents allocates four hundred thousand (\$400,000) dollars for each six hundred thousand (\$600,000) dollars raised by a participating institution from private sources.
32. After its formation, the Louisiana Board of Regents funded the Endowed Chair.
33. Dr. Karcioğlu held the Endowed Chair, from June 1995 until his termination in 2005.
34. At all times that he held the Endowed Chair, Dr. Karcioğlu carried out the duties of the chair-holder, namely the pursuit of scholarly work in the field of ocular oncology.
35. During the time in which he held the Endowed Chair, Dr. Karcioğlu conducted research in ocular oncology, gave dozens of regional, national and international presentations, and published over 50 scientific medical papers

and authored or co-authored 18 book chapters and published a major textbook as the editor in the field. He has been sitting on the editorial board of American Joint Commission on Cancer for the preparation of The Cancer Staging Handbook for 5th and 6th Editions and was elected and served as the President of the American Association of Ocular Pathologists in 2002-2004 he was also a member of the Council of American Academy of Ophthalmology from 2000-2004. He was the recipient of the Honor Award of American Academy of Ophthalmology in 1995, recipient of "Faculty Teaching Award" by Tulane Ophthalmology Residents and American College of Eye Surgeons Mentor Award in 2001, recipient of Honor Award by Tulane Residents for "Outstanding Lectures in Ophthalmology" in 1999, and was made a member The Society of Eminent Scholars in the Louisiana State with Recognition for Exceptional and Laudatory Contributions to Louisiana Higher Education in 1998.

36. Among other material and express conditions of the funding of the Endowed Chair was that the Defendant operate the endowment as a "restricted fund."
37. Defendant, in accepting the Board of Regents' matching funds for the Endowed Chair, agreed never to invade or expend the principal of the endowment for any purpose. Furthermore, the interest generated by the

principal of the endowed fund could solely be used to support the salary of the professor who held the Endowed Chair, and for other expenses directly related to the Endowed Chair's scholarly work.

38. The interest produced from the Endowed Chair cannot be utilized for any other purpose other than for the salary of the professor holding the Endowed Chair, and for other expenses directly relating to the Endowed Chair's scholarly work.
39. Due to the duties and obligations associated with the Endowed Chair, Dr. Karcioglu refrained from performing other work during the time he held the Endowed Chair so that he could satisfy the requirements of the Endowed Chair Holder.
40. In return for the services Dr. Karcioglu provided toward the scholarly work of the Endowed Chair, almost the entirety of Dr. Karcioglu's salary and benefits were paid from the proceeds of the Endowed Chair.
41. On or about December 20, 2005, Dr. Karcioglu was informed that he was being terminated due to alleged "financial exigency created by the Hurricane Katrina."
42. Upon information and belief, no financial exigency existed at the time Dr. Karcioglu was terminated.

43. Upon information and belief, the Endowed Chair has not been occupied since Dr. Karcioglu's termination.
44. Dr. Karcioglu's salary was being funded by the proceeds of the Endowed Chair.
45. Defendant's financial exigency did not exist as to Dr. Karcioglu's salary or benefits, nor would termination of Dr. Karcioglu improve or positively affect Defendant's financial situation.
46. Dr. Karcioglu performed services per the Endowed Chair's directives at the expense of his practice, and for the benefit of the Defendant, and further, Dr. Karcioglu relied on Defendant's compliance with the obligations imposed upon Defendant by the Board of Regents.
47. Defendant's termination of Dr. Karcioglu, and breach of the terms of the conditions with respect to the State's matching of funds for the Endowed Chair have damaged Dr. Karcioglu in an amount not less than One Million Five Hundred (\$1,500,000.00) Dollars.

FOURTH CLAIM FOR RELIEF

(Age Discrimination)

48. Plaintiff repeats and realleges paragraphs 1 through 47 above with the same

force and effect as if set forth in full herein

49. Dr. Karcioglu performed services for Defendant as the Director of the Residency Program in the Ophthalmology Department from July 1991 to Jan 1994 and from March 1998 to March 2004.
50. Dr. Karcioglu was not compensated any amounts for his work in that capacity.
51. Upon information and belief, younger employees of the Defendant who performed duties as Directors of their own Departments' Residency programs were compensated for their services.
52. Furthermore, Dr. Karcioglu performed the services of an adjunct professor of pathology at the University.
53. Defendant did not compensate Dr. Karcioglu for the academic activities in the department, yet, upon information and belief, Defendant compensated younger employees for performing similar services.
54. In December 2005, Tulane declared that it was in a state of financial exigency. Because of its declaration of financial exigency, Tulane terminated the employment of tenured professors without following the due process procedures of the removal of tenured professors. Many tenured professors were discharged while many untenured professors remained employed.

55. Other universities in New Orleans did not declare themselves in a state of financial exigency.
56. Tulane was not in a state of financial exigency and that that reason for discharging Dr. Karcioglu was a pretext for age discrimination.
57. Tulane also gave the reason for Karcioglu's discharge that he was not considered to be a mission-critical faculty member.
58. However Dr. Karcioglu was a mission-critical faculty member. Dr. Karcioglu is a board-certified pathologist and ocular pathologist. At the time of his discharge Dr. Karcioglu was the only ophthalmic pathologist in the department. Because the Residency Program under the ACGME requirements, requires that there be an ophthalmic pathologist in the department, after discharging Dr. Karcioglu, Tulane hired Dr. Curtis Margo.
59. As a further act of discrimination, Tulane failed to follow its own written policy when it failed to offer this position to me prior to selecting Dr. Margo for the position. Dr. Karcioglu's duties were assumed by Dr. Margo, who is not tenured, is younger than Dr. Karcioglu and was a former student and resident under Dr. Karcioglu.
60. In September 2006, Tulane initiated a search for a faculty member to fill the Haik Chair, which has been vacant since Dr. Karcioglu was discharged. This

position was advertised as “mission-critical”. Also, Dr. Karcioglu has nine years experience as the Director of the Residency Program, which made him critical to the teaching mission of the School of Medicine.

61. Dr. Karcioglu was removed from his tenured position without Tulane following the procedures in the faculty handbook for the removal of a tenured professor.
62. In December 2005, approximately 33 of the 134 tenured faculty in the School of Medicine were terminated.
63. At this same time period approximately 254 non-tenured faculty in the School of Medicine were not terminated.
64. In the School of Medicine, older faculty members were terminated and younger, less qualified faculty were retained.
65. Dr. Karcioglu’s tenure received far less deference than the American Association of University Professors (AAUP) policy and far less deference than the prior practice at Tulane would have required.
66. The School of Medicine has continued to refuse to hire Dr. Karcioglu back into his former position.
67. Defendant, through its agents, has discriminated against Dr. Karcioglu based on his age in violation of the Age Discrimination in Employment Act of 1973,

and the Louisiana age discrimination law in terminating his employment and in refusing to hire him back after his termination.

68. Defendant, by its acts and omissions discriminated against Plaintiff based on his age in denying him employment opportunities.
69. The acts of Defendant were practiced with reckless disregard of Plaintiff's rights under the ADEA.
70. As a direct result of the above acts of Defendant, Plaintiff has suffered pain and suffering, emotional distress, mental anguish, loss of reputation, embarrassment, and humiliation.
71. By the above acts the Defendant has violated the ADEA and the Louisiana age discrimination law by discriminating against the Plaintiff with respect to his compensation, terms, conditions, or privileges of employment, because of his age.

VII. PRAYER FOR RELIEF

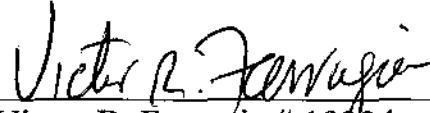
72. **WHEREFORE**, Dr. Karcioglu prays that this Court:
 - a. Declare that the acts and practices complained of herein are in violation of United States law and Louisiana law;
 - b. Enjoin and permanently restrain Defendant from engaging in such unlawful practices;

- c. Award Plaintiff all damages resulting from the breach of contract by Defendant.
- d. Award Plaintiff all earnings he did not receive because of discrimination, including but not limited to back pay, pre-judgment interest, bonuses, pension, and any other lost benefits;
- e. Award Plaintiff compensatory damages for pain and suffering, emotional distress, mental anguish, loss of reputation, embarrassment, and humiliation;
- f. Award Plaintiff liquidated damages;
- g. Award Plaintiff costs, expert witness fees, and attorney's fees;
- h. Grant Plaintiff any such relief as this Court may deem just and proper.

VIII. JURY DEMAND

73. Plaintiff demands trial by jury.

Respectfully Submitted,



Victor R. Farrugia # 19324

Attorney at Law

228 St. Charles Avenue

Suite 1100

New Orleans, LA 70130-2611

Telephone:(504) 525-0250

PLEASE SERVE:

The Administrators of the Tulane Educational Fund

Through its registered agent:

Victoria D. Johnson

Tulane University

300 Gibson Hall

6823 St. Charles Avenue

New Orleans, LA 70118