

**LEBSON, PRIGOFF & BAKER, LLP**

39 PARK PLACE, P.O. BOX 68

ENGLEWOOD, NJ 07631-0068

(201) 568-4000 MLP@NJLAW.COM

ATTORNEYS FOR PLAINTIFFS DINO D'ANGELO AND BRANT C. HAMILTON

DINO D'ANGELO and BRANT C.  
HAMILTON,

Plaintiffs,

v.

TOWNSHIP OF SPRINGFIELD, a  
municipal subdivision of the State of New  
Jersey, and WAYNE MASIELLO,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: UNION COUNTY

Docket No.

Civil Action

**COMPLAINT  
AND JURY DEMAND**

Plaintiffs DINO D'ANGELO ("D'Angelo") and BRANT C. HAMILTON

("Hamilton"), by way of Complaint against the defendants, say:

**FIRST COUNT**

1. D'Angelo resides at 205 Hillside Avenue, Springfield, New Jersey, has resided in Springfield, New Jersey since 1992, and has been an active volunteer member of the Springfield Fire Department ("SFD") continuously since August of 2006.

2. Hamilton resides at 128 South Maple, Springfield, New Jersey, has resided in Springfield, New Jersey his entire life, and has been an active volunteer member of the SFD continuously for the past six (6) years.

3. Defendant Township of Springfield (“Springfield”) is a political subdivision of the State of New Jersey, with its principal offices located at 100 Mountain Avenue, Springfield, New Jersey 07081-1702.

4. Defendant Wayne Masiello (“Masiello”) was, at all times relevant to this Complaint until his retirement, employed by Springfield as the Chief of the SFD, and resides at 101 Lyons Place, Springfield, New Jersey 07081.

5. On information and belief, Springfield Volunteer Fire Company No. 1 was established in 1906.

6. On information and belief, Springfield first established a paid fire department by Ordinance No. 107A, adopted on November 16, 1938.

7. At all times relevant to this Complaint, Springfield has maintained and controlled a part-paid fire department consisting of both paid and volunteer firefighters.

8. At all times relevant to this Complaint, Springfield has maintained and controlled a volunteer fire company or force under the direction of the Chief of the SFD.

9. Springfield has not adopted the provisions of the New Jersey Civil Service Act, *N.J.S.A. 11A:1-1, et seq.*

10. At all times relevant to this Complaint, Springfield has explicitly represented to plaintiffs and others that appointments of paid firefighters in the SFD are to be made “from the ranks of the Volunteer Fire Department”.

11. Plaintiffs relied upon the representation referenced in Paragraph 10 of this First Count in becoming volunteer firefighters in the SFD.

12. Springfield has adopted an “anti-nepotism” ordinance (“Antinepotism Ordinance”) which, *inter alia*, prohibits employment of children and nephews/nieces of persons who would be supervised as employees by their parents/uncles/aunts, and also prohibits participation “in any way” in the hiring process by any such “supervisor”. Ordinance 2000-21, §23.4 of the Code of Springfield.

13. Defendant Masiello and Michael Bilotti, the captain of the SFD, were, at all times relevant to this Complaint, each “supervisors” of all paid firefighters within the meaning of the Antinepotism Ordinance.

14. In 2007, defendants Masiello and Springfield conducted a selection process (“Selection Process”) purportedly designed to generate a two-year appointment list (the “List”) for paid firefighters for the SFD.

15. The Selection Process, authorized by resolution of Springfield’s governing body on or about May 22, 2007, consisted of a written examination, a physical examination, and an in-person oral interview. The written examination was held on July 21, 2007 and the physical examination was held on August 24, 2007.

16. The in-person interviews were conducted by two members of the New Jersey State Career Fire Chiefs Association (“NJSCFCA”) on October 6, 2007.

17. In addition, defendant Masiello gave service credit points to volunteer firefighters with at least two (2) years of active service and a call percentage of at least 30%, purportedly in accordance with *N.J.S.A.* 40A:14-45.

18. The following is the two-year List representing the final results of the Selection Process, as published by defendant Masiello on October 19, 2007:

<u>Name</u>	<u>Written</u>	<u>Physical</u>	<u>Oral</u>	<u>Service credits</u>	<u>Total</u>
Benford	45	38	9.50	10	102.50
Vigilanti	33	42	8.25	10	93.25
Masiello	43.5	34	9.30		86.80
Bilotti	41	38.5	7.0		86.50
DiIorio	39.5	38.5	7.8		85.80
Ropelski	34.5	34	7.0	10	85.50
<b>D'Angelo</b>	<b>41.5</b>	<b>39.5</b>	<b>4.25</b>		<b>85.25</b>
Ruggiero	38	37.5	9.20		84.70
<b>Hamilton</b>	<b>41.5</b>	<b>37.5</b>	<b>5.60</b>		<b>84.60</b>
Xaroulakos	32.5	31.5	4.00	10	78.00

19. Of the ten (10) candidates who participated in the Selection Process and ended up on the List, five (5) were two-year SFD volunteers (Benford, plaintiff Hamilton, Vigilanti, Ropelski and Xaroulakos), four (4) were not SFD volunteers (Masiello, Bilotti, DiIorio and Ruggiero), and plaintiff D'Angelo at the time was an SFD volunteer with less than two years' service. On information and belief, none of these candidates possessed an exempt certificate.

20. Defendants Masiello and Springfield mishandled the Selection Process and conducted same in violation of law in the following respects:

A. Despite the representation by Springfield that appointments to the paid department were to be made from amongst the SFD volunteer firefighters, and the requirements of *N.J.S.A. 40A:14-44*, and even though six (6) SFD volunteer firefighters, more than enough to fill existing and anticipated paid vacancies in the SFD, had applied, defendants admitted non-volunteer firefighters to the Selection Process;

B. Defendants did not conduct the Selection Process in accordance with the authorizing resolution;

C. Notwithstanding that their appointment was prohibited by the Antinepotism Ordinance, defendants permitted both Adam Masiello, defendant Masiello's son, and Jeremy Bilotti, the nephew of Captain Michael Bilotti, neither of whom were volunteer firefighters in the SFD, to be candidates in the Selection Process;

D. Defendant Masiello participated in the Selection Process and permitted Michael Bilotti to participate in the Selection Process, including scoring the mandatory ladder climb, both in violation of the Antinepotism Ordinance;

E. Defendant Masiello made contact with at least one of the assessor(s) during the conduct of the physical exam, on information and belief seeking to influence the score his son received from that assessor. Adam Masiello received a score of 34 out of 45 points on the physical test, even though he received assistance on and failed to satisfactorily complete the ladder carry (serpentine) exercise;

F. On information and belief, defendant Masiello, acting either alone or in concert with others, forged the NJSCFCA's official report of scores obtained by candidates in the oral interviews;

G. Defendant Masiello knowingly and fraudulently posted the false oral interview scores in order to, among other things, improve the final score of his son, Adam Masiello, and to lower the final scores of plaintiffs in retaliation for the questions they raised about the Selection Process;

H. Service credits, purportedly in accordance with *N.J.S.A.* 40A:14-45, were applied despite the fact that state law provides that such credits are only to be applied in municipalities which have adopted the provisions of the New Jersey Civil Service Act; and

I. Despite the requirements of *N.J.S.A.* 40A:14-44, defendant Masiello arbitrarily and without authority imposed a condition of 30% call response as a condition for the preference given to two-year SFD volunteers, obviously to retaliate against plaintiffs.

21. The oral interview scores posted by defendant Masiello, which he falsely represented were the scores awarded by the NJSCFCA, were as follows (highest to lowest):

Benford	9.5
Massiello	9.3
Ruggiero	9.2
Vigilanti	8.25
DiIorio	7.8
Bilotti	7.0
Ropelski	7.0
<b>Hamilton</b>	<b>5.6</b>
<b>D'Angelo</b>	<b>4.25</b>
Xarhoulakos	4.0

22. The actual oral interview scores awarded by the NJSCFCA were as follows (highest to lowest):

<b>Hamilton</b>	<b>9.5</b>
DiIorio	9.25
<b>D'Angelo</b>	<b>8.25</b>
Benford	7.5
Ropelski	7.5
Vigilanti	5.5
Ruggiero	5.25
Xarhoulakos	4.25
Masiello	3.25
Bilotti	2.75

23. It should have been apparent to Springfield that there was a problem with the posted oral interview scores. Adam Masiello, with no firefighting training or experience, no emergency medical experience, and no college education purportedly scored 9.3, while plaintiff D'Angelo, an active volunteer firefighter in the SFD, a certified paramedic, a registered nurse, and a college graduate who finished at the top of his class at the fire academy purportedly scored

4.25, and plaintiff Hamilton, a longstanding active volunteer firefighter in the SFD and EMT who is attending college purportedly scored 5.6.

24. The Selection Process was conducted by defendants to prevent plaintiffs from finishing amongst the top three (3) candidates on the L List, accomplished by giving each of them false low scores on the oral interview.

25. The aforesaid Selection Process was defective in that it failed to place all candidates who had two years' experience as volunteer firefighters in the SFD ahead of all other candidates on the List, as required by *N.J.S.A.* 40A:14-44.

26. Had the List been constructed properly using the correct interview scores awarded by NJSCFCA and without the service credit points improperly awarded under *N.J.S.A.* 40A:14-45, plaintiff Hamilton would have been ranked #2 on the List, as follows:

<b>Name</b>	<b>Written</b>	<b>Physical</b>	<b>Oral</b>	<b>2-year volunteer</b>	<b>Total</b>
Benford	45	38	7.5	Yes	90.50
<b>Hamilton</b>	<b>41.5</b>	<b>37.5</b>	<b>9.5</b>	<b>Yes</b>	<b>88.50</b>
Vigilanti	33	42	5.5	Yes	80.50
Ropelski	34.5	34	7.5	Yes	76.00
Xarhoulakos	32.5	31.5	4.25	Yes	68.25
<b>D'Angelo</b>	<b>41.5</b>	<b>39.5</b>	<b>8.25</b>	<b>No</b>	<b>89.25</b>
DiIorio	39.5	38.5	9.25	No	87.25
Bilotti	41	38.5	2.75	No	82.25
Masiello	43.5	34	3.25	No	80.75
Ruggiero	38	37.5	5.25	No	80.75

27. Moreover, in August of 2008, when plaintiff D'Angelo's achieved two (2) years of continuous service as an SFD volunteer firefighter, plaintiffs D'Angelo and Hamilton would have been ranked numbers 2 and 3 on the List, as follows:

<b>Name</b>	<b>Written</b>	<b>Physical</b>	<b>Oral</b>	<b>2-year volunteer</b>	<b>Total</b>
Benford	45	38	7.5	Yes	90.50
<b>D'Angelo</b>	<b>41.5</b>	<b>39.5</b>	<b>8.25</b>	<b>Yes</b>	<b>89.25</b>

<b>Hamilton</b>	<b>41.5</b>	<b>37.5</b>	<b>9.5</b>	<b>Yes</b>	<b>88.50</b>
Vigilanti	33	42	5.5	Yes	80.50
Ropelski	34.5	34	7.5	Yes	76.00
Xarhoulakos	32.5	31.5	4.25	Yes	68.25
DiIorio	39.5	38.5	9.25	No	87.25
Bilotti	41	38.5	2.75	No	82.25
Masiello	43.5	34	3.25	No	80.75
Ruggiero	38	37.5	5.25	No	80.75

28. Beginning in May of 2007, even before the administration of the examinations and interviews which constituted the 2007 Selection Process, and continuing through January of 2008, plaintiffs on many occasions, both directly and through counsel, advised Springfield of the defects in the Selection Process. These included meetings and telephone calls with defendant Masiello, members of the Township Committee (the governing body of Springfield), the Township administrator, and counsel for the Township.

29. Among the issues raised by plaintiffs and their counsel were the failure to give an absolute preference to two-year volunteers, the improper involvement of Masiello in the selection process, the anomalous oral interview scores and the presence of Adam Masiello and Jeremy Bilotti on the List in spite of the violations of the Antinepotism Ordinance.

30. Nevertheless, neither Springfield nor Masiello took any action to correct the List to give preference to the two-year volunteers, to reflect the actual oral interview scores or to remove Adam Masiello or Jeremy Bilotti from the List.

31. Springfield had the obligation to adequately supervise Masiello in the performance of his duties and failed to do so.

32. When informed by plaintiffs of the problems with the interview scores, Springfield failed to adequately investigate same.

33. Springfield knew, or should have known, about the forgery and the posting of fraudulent scores referred to in Paragraphs 20(F), 20(G) and 21 through 23 of this First Count.

34. Nevertheless on or about January 8, 2008, Springfield determined to interview candidates Benford, Vigilanti and DiIorio (#1, #2 and # on the List, and #1, #3 and #7 on the List if the correct oral interview scores and volunteer preference were used) and to appoint three (3) candidates from the List to paid positions in the SFD.

36. As a result of the foregoing, plaintiff D'Angelo, joined later by plaintiff Hamilton, was forced to file a lawsuit (the "Prerogative Writ Lawsuit") seeking, among other things, an injunction preventing Springfield from making the anticipated appointments.

35. One of the bases for the injunction application was that Springfield was bound by *N.J.S.A. 40A:14-44*.

36. In its response to the injunction application, Springfield contended that it was not bound by *N.J.S.A. 40A:14-44*.

37. On or about February 22, 2008, Assignment Judge Walter R. Barisonek granted a preliminary injunction in the Prerogative Writ Lawsuit enjoining Springfield, among other things, from "appointing any paid firefighter under the ordinance in question until the further order of the Court".

38. Nevertheless, three days later, at a public meeting held on February 25, 2008, Springfield rescinded the resolution authorizing the Selection Process and the List and appointed two (2) paid firefighters, relying on the authority of *N.J.S.A. 40A:14-44*. Both actions were taken before permitting any public comment thereon

39. The two firefighters appointed by Springfield on February 25, 2008, Benford and Vigilanti, were #1 and #2 on the List, and were appointed based upon the recommendation of defendant Masiello.

40. Although Vigilanti was a two-year volunteer firefighter, he should have been ranked below plaintiff Hamilton on the List if the correct oral interview scores had been used, and plaintiff Hamilton should have been appointed in his stead.

41. Given the questions raised by plaintiffs about Masiello's involvement and mishandling of the Selection Process, Springfield should not have blindly relied upon his recommendation in the appointment of paid firefighters, particularly one in favor of a candidate who scored below Hamilton in the Selection Process..

42. On or about March 7, 2008, plaintiffs through their own investigation confirmed that Masiello had posted forged scores from the oral interviews and alleged the same in a proposed Amended.Verified Complaint in the Prerogative Writ Action, which was served upon counsel for Springfield on March 10, 2008,.

43. Despite the readily available evidence of defendant Masiello's misconduct, defendant Springfield failed to bring charges against him, to suspend him or to otherwise act to remove him from office.

44. Rather, defendant Masiello was allowed to retire as Chief of the SFD with, on information and belief, a full pension.

45. It was not until after at least one newspaper editorial criticized Springfield for its handling of the issue that Springfield referred the allegation of forgery to the Union County Prosecutor, who subsequently filed charges against Masiello for criminal forgery.

46. After August of 2008, with Benford and Vigilanti having been appointed, the List, using the correct oral interview scores and excluding Adam Masiello and Jeremy Bilotti, would have been as follows:

<b>Name</b>	<b>Written</b>	<b>Physical</b>	<b>Oral</b>	<b>2-year volunteer</b>	<b>Total</b>
<b>D'Angelo</b>	<b>41.5</b>	<b>39.5</b>	<b>8.25</b>	<b>Yes</b>	<b>89.25</b>
<b>Hamilton</b>	<b>41.5</b>	<b>37.5</b>	<b>9.5</b>	<b>Yes</b>	<b>88.50</b>
Ropelski	34.5	34	7.5	Yes	76.00
Xaroulakos	32.5	31.5	4.25	Yes	68.25
DiIorio	39.5	38.5	9.25	No	87.25
Ruggiero	38	37.5	5.25	No	80.75

47. Nevertheless, on or about September 23, 2008, rather than consider either plaintiffs D'Angelo or Hamilton for a vacant position in the SFD, Springfield made a conditional offer of appointment to Ropelski for a paid position in the SFD.

48. Had Springfield used the List with the correct scores, such an offer should have been made to D'Angelo.

49. By virtue of the foregoing, plaintiffs have been damaged.

WHEREFORE, plaintiffs demand judgment against defendants Masiello and Springfield, jointly and severally, for compensatory damages, attorneys' fees, interest and costs of suit.

**SECOND COUNT**

1. Plaintiffs repeat each and every allegation contained in the First Count of this Complaint as if set forth at length herein.

2. The aforesaid conduct by defendant Masiello constitutes intentional fraud, and was wilful and malicious.

3. As a proximate result of the aforesaid conduct by defendant Masiello, plaintiffs have suffered damages.

5. Defendant Springfield is jointly and severally liable for the aforesaid conduct of defendant Masiello under the doctrine of *respondeat superior*.

WHEREFORE, plaintiffs demand judgment against defendants Masiello and Springfield, jointly and severally, for compensatory damages, punitive damages, attorneys' fees, interest and costs of suit.

### **THIRD COUNT**

1. Plaintiffs repeat each and every allegation contained in the First and Second Counts of this Complaint as if set forth at length herein.

2. The aforesaid conduct by defendant Masiello constitutes tortious interference with plaintiffs' prospective economic advantage.

3. Defendant Masiello's aforesaid conduct was intentional, wilful and malicious.

4. As a proximate result of the aforesaid conduct by defendant Masiello, plaintiffs have suffered damages.

5. Defendant Springfield is jointly and severally liable for the aforesaid conduct of defendant Masiello under the doctrine of *respondeat superior*.

WHEREFORE, plaintiffs demand judgment against defendants Masiello and Springfield, jointly and severally, for compensatory damages, punitive damages, attorneys' fees, interest and costs of suit.

### **FOURTH COUNT**

1. Plaintiffs repeat each and every allegation contained in the First, Second, and Third Counts of this Complaint as if set forth at length herein.

2. Defendant Springfield failed to properly supervise defendant Masiello in the performance of his duties as Chief of the SFD and in the conduct of the Selection Process.

3. As a proximate result of the foregoing, plaintiffs have suffered damages.

WHEREFORE, plaintiffs demand judgment against defendant Springfield for compensatory damages, attorneys' fees, interest and costs of suit.

#### **FIFTH COUNT**

1. Plaintiffs repeat each and every allegation contained in the First, Second, Third and Fourth Counts of this Complaint as if set forth at length herein.

2. Plaintiffs, as volunteer firefighters in Springfield, receive remuneration from Springfield.

3. Plaintiffs are "employees" within the meaning of the Conscientious Employee Protection Act ("CEPA"), *N.J.S.A. 34:19-1, et seq.*

4. Defendants Masiello and Springfield have retaliated, and are continuing to retaliate, against plaintiffs for their disclosing to Springfield and the Superior Court, and otherwise challenging, the improprieties of the Selection Process, in violation of CEPA.

5. As a proximate result of the foregoing, plaintiffs have suffered damages.

WHEREFORE, plaintiffs demand judgment against defendants Springfield and Masiello:

A. For a permanent injunction restraining continued violation of CEPA;

- B. For compensatory damages, reasonable costs, and attorneys' fees;
- C. For punitive damages; and
- D. For a civil fine in accordance with *N.J.S.A* 34:19-5.

LEBSON, PRIGOFF & BAKER, LLP  
Attorneys for Plaintiffs

By: \_\_\_\_\_  
MICHAEL L. PRIGOFF

Dated: February 23, 2009

**JURY DEMAND**

Plaintiffs demand trial by jury of all issues so triable.

LEBSON, PRIGOFF & BAKER, LLP  
Attorneys for Plaintiffs

By: \_\_\_\_\_  
MICHAEL L. PRIGOFF

Dated: February 23, 2009

**CERTIFICATION**

I hereby certify pursuant to *R. 4:5-1* that, to the best of my knowledge and based upon information provided to me by my clients, the matter asserted in the attached Complaint is not the subject of any other action pending in any court or arbitration proceeding, and that no other such action or arbitration proceeding is contemplated.

I further certify that, upon information and belief and based upon the same information received from my clients, no other non-party should be joined in this action pursuant to *R. 4:28* or who is subject to joinder pursuant to *R. 4:29-1(b)* because of potential liability to any party on the basis of the same transactional facts.

Dated: February 22, 2009

\_\_\_\_\_  
MICHAEL L. PRIGOFF

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Michael L. Prigoff, Esq. is hereby designated as trial counsel in the above matter.

LEBSON, PRIGOFF & BAKER, LLP  
Attorneys for Plaintiffs

By: \_\_\_\_\_  
MICHAEL L. PRIGOFF

Dated: February 22, 2009