

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

09603300

ALAN LEVY,

Index No. \_\_\_\_\_/2009

Plaintiff,

– against –

VERIFIED COMPLAINT

SEDGWICK, DETERT, MORAN &  
ARNOLD LLP, and SCOTT HAWORTH,

Defendants.

**FILED**  
OCT. 29 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

Plaintiff Alan Levy ("Plaintiff" or "Levy"), by and through his attorney  
Hernstadt Atlas LLP, for his complaint against defendants Sedgwick, Detert, Moran & Arnold  
LLP ("SDMA") and Scott Haworth ("Haworth"), alleges as follows:

INTRODUCTION

1. This action is brought to remedy discrimination against Plaintiff in violation of the New York City Human Rights Law, Administrative Code of the City of New York §§ 8-107 *et seq.* (the "Administrative Code").
2. Plaintiff seeks redress for the blatant discrimination against him by SDMA and Haworth on the basis of disability and/or perceived disability.
3. Levy had been for years the star associate of SDMA's New York office, and was the highest billing associate in any of the firm's 13 offices across the country. That ferocious pace, and defendant Haworth's abusive conduct, resulted in Levy's suffering a breakdown. The firm placed Levy on Family Medical Leave Act leave, and when that expired, on unpaid disability leave. It engaged in continuing discussions with Levy regarding his eventual return to work over the course of the more than eight months he was out on disability leave.

4. Shockingly, however, when Levy informed SDMA's director of human resources that he was ready to return to work, defendants abruptly fired him. Rather than working with Levy towards his eventual return, SDMA had actually been playing Levy along, hoping that he would simply disappear. When Levy announced his imminent return to work, fearing that his disability, or what they perceived to be a disability, meant that Levy was damaged goods, who would not be the 3000-hour/year workhorse of the past, defendants brutally terminated his employment.

#### **JURISDICTION AND VENUE**

5. This Court has personal jurisdiction over Defendants pursuant to New York Civil Practice Law and Rules ("CPLR") §§ 301 and 302(a).

6. Venue in this Court is proper pursuant to CPLR § 503(a) and (c), as Defendant SDMA has its principal place of business in New York County, Levy's place of employment was in New York County, and the acts complained of took place in New York County.

#### **PARTIES**

7. Plaintiff Alan Levy is an individual who resides in the State of New Jersey. At all times relevant hereto, Plaintiff was employed by defendant SDMA in its New York City office.

8. Defendant SDMA was, at all relevant hereto, a limited liability partnership organized, upon information and belief, under and by virtue of the laws of the State of California, and registered to business in the State of New York, with a place of business at 125 Broad Street, 39th Floor, New York, New York 10004-2400.

9. Defendant Scott Haworth is an individual who resides in New Jersey. At all times relevant hereto, defendant Haworth was a partner with SDMA and worked in SDMA's New York City offices.

### **FACTUAL BACKGROUND**

10. Levy is a 1999 graduate of Rutgers-Newark School of Law. He was employed as an associate at Sedgwick, Detert, Moran & Arnold LLP ("SDMA") from in or about September 2005 through December 2008, when his employment was terminated by SDMA on the basis of a disability or perceived disability.

11. SDMA abruptly discharged Levy within days of learning that Levy planned to return to work at the end of more than eight month's medical leave, which Levy was forced to take as a result of a breakdown and severe depression.

12. At SDMA, Levy worked very closely with partner Scott Haworth, with whom Levy had worked at their prior place of employment for two years, before Haworth brought Levy to SDMA with him as his top associate. Haworth frequently referred to Levy as his "go to" litigation associate and "right hand man." He was also the highest billing associate at SDMA from 2005 through 2008, billing approximately 3000 hours per year.

13. As Haworth's trusted lieutenant, Levy was also the unwilling recipient of inappropriate and unwelcome details about Haworth's extra-marital affairs and drug use and about the prior harassment/hostile workplace claims other associates had lodged against him. Haworth required Levy, as a captive audience, to listen to him brag about his sexual liaisons, and repeatedly directed Haworth to lie for him to shield his adulterous behavior from his wife,

including on one occasion ordering Levy to deny that Haworth had attended a lunch with a client with whom he was having an ongoing sexual affair.

14. On another occasion, Haworth instructed Levy to remove some marijuana Haworth had absent-mindedly left in a litigation bag in his office.

15. Despite the difficulty of working with Haworth – a period of years during which Levy was routinely subjected to abusive and/or wildly inappropriate treatment – Levy was able to take a great deal of responsibility for his cases and develop his litigation skills, and remained a dedicated, loyal and extraordinarily hard-working employee. Levy earned excellent evaluations throughout his employment at SDMA and his association with Haworth.

16. By late 2007-early 2008, however, the extraordinarily heavy hours Levy worked, and Haworth's abusive personal style, began to take a heavy toll on Levy's emotional and psychological health. Levy began to suffer from serious physical and mental health issues. Ultimately, on or about April 16, 2008, Levy's physician determined that he could no longer function in the dysfunctional SMDA workplace and directed Levy to go out on medical leave.

17. In effect, Levy suffered a breakdown, which required significant medical and pharmacological treatment from April-December 2008, before his doctors were prepared to authorize him to return to work.

18. Over the course of Levy's medical leave, which was protected under the Family Medical Leave Act only through July 11, 2008, and was thereafter considered an unpaid leave by SDMA, Levy regularly communicated with the firm's Director of Human Resources, Edith Andries, regarding his condition and various matters that arose in connection with the disability leave.

19. On several occasions during Levy's disability, Andries inquired about Levy's intention to return to work at SDMA, and on each of those occasions, Levy stated to Andries his intent and desire to return to work at SDMA.

20. Levy contacted Ms. Andries in November 2008 to let her know that his disability condition was improving and he was planning to return to work shortly. Andries advised Levy that a certification of fitness would need to be prepared by Levy's physician so that he could return to work.

21. Levy also notified Andries that, on the advice of his physicians, he was considering requesting that he be moved from the New York City SDMA office to the one located closer to his home in Newark, New Jersey, as an "accommodation" to his medical condition.

22. When Ms. Andries informed Levy that she would have to discuss such a request with both the firm's chairperson and the Newark office's managing partner, Levy advised her that he would begin working with his physicians to prepare the necessary certification of fitness.

23. Levy had several further discussions with Ms. Andries regarding his return to work in late November and early December, and throughout all of his discussions with her, it was understood that Levy would return to work at SDMA when his doctors permitted it.

24. Shortly after informing Ms. Andries that he was working with his doctors on a certification of fitness to return to work, however, Levy's discussions with the firm were abruptly terminated by a telephone call from SDMA partner Michael Bernstein made from the New York office, on December 12, 2008, with a follow-up letter, from the New York office, on that same date. Bernstein brusquely informed Levy that "the firm simply does not have work

available to support your return” and that Levy’s “employment will end at the end of business on Friday December 12, 2008.”

25. This news came as a complete shock to Levy because at no time during his many communications with SDMA between April and December 2008 had there ever been any suggestion that there might not be enough work for Levy. And, in fact, as SMDA has subsequently admitted, the written reason it provided for Levy’s discharge was false.

26. Rather, SMDA subsequently contended, Levy was fired because he allegedly stated to Haworth, and one or more SMDA associates, that he would never work with Haworth again.

27. This second justification is actually just another false and pretextual excuse for the abrupt decision to fire Levy within days of his informing the firm that his doctors were preparing his return-to-work paperwork. Levy was actually fired because Haworth and others at the firm thought that Levy’s medical condition would hinder his performance and his ability to work the extraordinary hours that had been his stock in trade for so many years.

28. In fact, Levy never, at any time, stated to any SDMA partner or other person in a position of authority at SDMA that he refused to work with any SDMA partner or associate. Indeed, the only accommodation Levy had ever even suggested was a move to the Newark office.

29. To the contrary, while Levy never requested, or demanded, or stated, that he would not work with Haworth, there is an internal email from SDMA’s Director of Administration to its Director of Human Resources in July 2008 – at a time when Levy and SDMA’s HR director were discussing Levy’s eventual return to work, and would continue to do so for months to come – which includes the shocking statement that neither Haworth nor two

other senior SDMA partners “want to work with Alan when/if Alan returns from leave.” This statement is completely unexplained in light of Levy’s extraordinary billing history and stellar performance reviews, and demonstrates the firm’s fear or perception that Levy was disabled.

30. That the after-the-fact explanations given for Levy’s discharge are mere pretext is further established by the fact that SDMA had also started working behind the scenes to fabricate a justification based upon poor performance to discharge Levy during the period that Levy was having continued discussions with the firm’s Director of Human Resources about his eventual return to work.

31. Thus shortly after the email referred to above, Haworth, upon information and belief, instigated an evaluation of Levy’s 2008 performance some four months after Levy went out on disability leave. The pointlessness of such an undertaking is obvious: Levy had only worked for three months in 2008, and for most of that time his performance was obviously affected by the medical condition that became so grave that he was directed to take a nine-month medical leave to recover. The review, which was never shared with Levy during his employment with the firm, was markedly more negative than any other review Levy had ever received.

32. There is no justifiable basis to conduct a secret, uniquely and baselessly negative performance review of less than four month’s work, well before the time that such reviews were normally conducted, while Levy was still out on medical leave.

33. Upon information and belief, this is the only time that SDMA had ever conducted a mid-year review, or a review that was never shared with its subject. SDMA thus broke from its usual practices and defied logic to create a negative review for the sole purpose of justifying a discharge of Levy.

34. Haworth's pretextual claim that he did not wish to work with Levy is further contradicted by Haworth's own actions. On or about December 18, 2008, just days after Levy's termination, Haworth sent Levy a text message to Levy's personal cellular phone requesting that Levy assist him with one of Haworth's upcoming trials.

35. Finally, SDMA's conduct in refusing even to offer Levy a severance package upon his discharge, which was the firm's standard practice, is further evidence that SDMA broke from its usual practices and constitutes additional discrimination against him.

36. Based upon his conversations with SDMA between April and December 2007, and upon his extraordinary and successful performance in the past, Levy had every assurance that he would return to work once his doctors cleared him to do so. Behind his back, however, fearful that Levy's disability or perceived disability meant that he was defective goods that they did not want in the office, concerned that Levy had discussed seeking an accommodation for his disability from SDMA, Haworth and others at SDMA worked to fabricate a basis on which to fire Levy in the event that he recovered and was cleared to return to work.

37. In the end, SDMA and Haworth relied first on pretextual lies (there was no work for Levy) and then on pretextual fabrications regarding his willingness to work with Haworth to cover the real reason for its discriminatory discharge: Levy's disability or perceived disability.

**AS AND FOR A FIRST CAUSE OF ACTION**

**(Disability Discrimination – New York City Human Rights Law, New York City  
Administrative Code §§ 8-107 *et seq.*)  
(Against All Defendants)**

38. Plaintiff repeats and realleges paragraphs 1-37 of this Complaint as if set forth herein.

39. By the acts and practices described herein, defendants discriminated against Levy in the terms and conditions of his employment because of his disability or perceived disability, in violation of the Administrative Code.

40. Defendant Haworth is liable under the Administrative Code as an aider and abettor of the discrimination against plaintiff.

41. Defendant SDMA is liable as Levy's "employer" under the Administrative Code.

42. Levy is now suffering and will continue to suffer irreparable injury and monetary damages as a result of defendants' discriminatory acts.

43. Defendants acted intentionally and with malice and/or reckless indifference to Levy's protected rights.

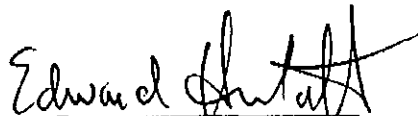
**WHEREFORE**, Plaintiff demands judgment in his favor as follows:

- (a) declaring the acts and practices complained of herein are in violation of Administrative Code;
- (b) enjoining and permanently restraining these violations of the Administrative Code;
- (c) directing Defendants to place Plaintiff in the position he would have been in but for defendants' discriminatory conduct, and to make him whole for reputational damage and lost earnings he would have received but for defendants' discriminatory conduct, including but not limited to wages, bonuses, seniority, pension and other lost benefits;

- (d) directing Defendants, jointly and severally, to pay an additional amount to be determined at trial but not less than \$5,000,000 to compensate Plaintiff for the severe emotional distress that Defendants' unlawful conduct has caused Plaintiff in violation of the Administrative Code;
- (e) directing Defendants, jointly and severally, to pay Plaintiff an additional amount of to be determined at trial but not less than \$5,000,000 as punitive damages in violation of the Administrative Code;
- (f) awarding Plaintiff such interest as is allowed by law;
- (g) awarding Plaintiff his reasonable attorneys' fees and costs; and
- (h) granting such other and further relief as this Court deems necessary and proper.

Dated: New York, New York  
October 22, 2009

HERNSTADT ATLAS LLP

By:   
Edward Hernstadt  
Attorneys for Plaintiff Alan Levy  
11 Broadway, Suite 615  
New York, New York 10004  
T: 212-809-2501

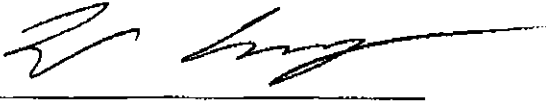
VERIFICATION

STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF NEW YORK )

ALAN LEVY, being duly sworn, deposes and says:

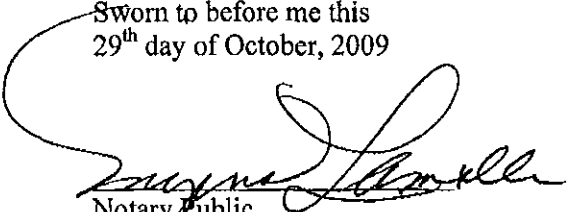
I am the Plaintiff in this action. I have read the foregoing Verified Complaint and know its contents. The matters stated in the foregoing document are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true.

ALAN LEVY



---

Sworn to before me this  
29<sup>th</sup> day of October, 2009



Notary Public

MYRNA LAMOLLI  
Notary Public, State of New York  
No. 01LA4825109  
Qualified in New York County  
Commission Expires January 31, 2011