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Hughes Hubbard Wins Appellate Victory for L-3 and Vertex Aerospace

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One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

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November 17, 2020 — The firm secured an appellate victory for L-3 Communications and its then-sub subsidiary Vertex Aerospace when the Second Circuit affirmed summary judgment in their favor in an employment retaliation and race discrimination case.

On Nov. 5, a three-judge Second Circuit panel held that plaintiff Roy Lance Ware, a black former Vertex employee who worked in Afghanistan, did not have a viable claim under Title VII of the Civil Rights Act and the New York State and City Human Rights Laws.

L-3, now L-3Harris Technologies, is the sixth-largest defense contractor in the U.S. and a top-10 defense company globally, with approximately \$18 billion in annual revenue, 48,000 employees and customers in more than 100 countries. Headquartered in Madison, Miss., Vertex Aerospace, then an L3 subsidiary, provided aircraft maintenance and repair services for the U.S. government in Afghanistan at the time of Ware's employment.

Ware worked for Vertex as a distribution manager from September 2013 until December 2014, when Vertex suspended him for three days for charging a personal expense to the company credit card. Vertex said that Ware, who never returned to his job, resigned when being informed of the suspension; Ware claimed he was terminated and it was because he had complained of discriminatory treatment.

Ware filed a \$3 million suit in October 2016 against L-3 and Vertex, claiming violations of Title VII, the New York State Human Rights Law (NYHRL) and the New York City Human Rights Law (NYCHRL). HHR moved for summary judgment on all claims in May 2019.

In February 2020, U.S. District Judge Loretta Preska dismissed all of Ware's claims, ruling that sufficient evidence did not exist for reasonable jurors to conclude that Vertex acted with discriminatory intent toward him or retaliated against him.

On appeal, HHR argued that Ware’s claims under the NYHRL and NYCHRL were properly dismissed because he was a nonresident who never worked in New York, which HHR had not argued to the district court. Acknowledging that it typically does not address new issues raised on appeal, the Second Circuit said it chose to reach the merits because HHR’s argument presented a pure question of law. Because Ware was a resident of Jacksonville, Fla., during his employment with Vertex and at the time he filed, the Second Circuit agreed with HHR.

The Second Circuit panel also agreed with Judge Preska’s reasoning that Ware did not show he suffered an adverse employment action under circumstances giving rise to an inference of retaliation because Ware resigned on his own volition. Although Ware stated in his deposition that he thought his supervisor fired him during a phone call regarding his suspension, he also testified that he was “honestly ... not sure” how his employment ended.

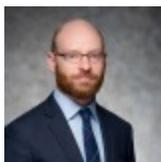
“Apart from his own equivocal statements during his deposition, there is no other evidence that Ware was terminated,” the panel found.

Ned Bassen, who has represented L-3 for more than 30 years, led the HHR team and argued the appeal. The team also included Carl Mills and Kimberly Jones.

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