

POSTAL LIES AND BAD FAITH DEFAULT TERMINATION

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The Court of Federal Claims recently held a default termination by a U.S. Postal Service (“USPS”) Postmaster to be improper and in bad faith, and awarded the plaintiff “expectation damages” that were actually foreseen or reasonably foreseeable—substantially more than the amount recoverable under a standard conversion of the default to a termination for convenience. *Brian Bowles v. United States*, 144 Fed.Cl. 240 (2019).

The facts of the case are relatively simple but stark:

- Bowles received a contract for postal delivery in 2009. Rosi O’Connell was the administrative official in charge of Bowles’ contract and postmaster in Vermont.
- During the first year of performance, Bowles’ work was satisfactory, but during the second year, disputes arose about routes, payment and inspections.
- After further disagreements, on April 26, 2012, Ms. O’Connell claimed that Mr. Bowles attacked her and hit her over the head three times with a postal scanner. Mr. Bowles stopped performing the contract.
- On May 18, 2012, the USPS notified Mr. Bowles that his contract was terminated for default.
- Mr. Bowles filed suit in the District Court for the district of Vermont, which transferred it to the Court of Federal Claims

The court performed a standard termination analysis to determine if there was a basis for the default termination. The court could find no valid basis, in light of the actions of Ms. O’Connell. The court found that Ms. O’Connell’s statements that she had been attacked and verbally harassed to be unconvincing, and represented a falsifying of the incident which led to the default. The Court noted that a doctor had examined Ms. O’Connell after the alleged assault and found no signs of trauma to the head. Instead the doctor found signs of “secondary gain”, which was described as “benefitting from an injury or illness, or exaggerating an illness or an injury for a secondary gain.” During trial, the court examined the exact model of the 5 pound scanner allegedly used in the attack, which had a metal bottom and heavy plastic sides, and determined that Ms. O’Connell falsely accused Mr. Bowles of assault. The court also found that Mr. Bowles’s actions on the contract were reasonable, and that Ms. O’Connell’s conduct in administering the contract demonstrated that she had a specific intent to injure Mr. Bowles.

In determining damages, the court held that Mr. Bowles was not limited to damages in accordance with the convenience termination clause, but rather, his foreseeable damages if he had completed the contract, and that it would have been renewed for one additional term, since there were no negative reviews of his performance, except those based on bad faith. The court found that the USPS owed \$16,221 for the remainder of Bowles’ contract, and \$56,150 for the likely renewal contract.

Takeaway. Basing a default termination on lies is a demonstration of bad faith on the part of the government. Here, the proof was exceptionally strong, and resulted in far more than the normal

convenience termination damages, which would have been the result if there was no bad faith shown.

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