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Appeals court dismisses Nowicki claim against MOFD

By Nick Marnell

A court of appeals has dismissed the lawsuit brought against the Moraga-Orinda Fire District by former Fire Chief Pete Nowicki, who claimed that MOFD was obligated to make up the money stripped from his pension by a county agency.

Nowicki signed on as MOFD fire chief in July 2006, and the district added amendments to his contract in February 2008 and December 2008, allowing the chief to sell back vacation leave, administrative leave and holiday pay. The chief retired in January 2009, and according to the Contra Costa County Employees' Retirement Association board, the cashed-out perks granted in 2008 improperly inflated his retirement benefit and the district board, knowing Nowicki was soon going out the door, went along with the changes. The retirement board voted to cut Nowicki's annual pension of \$241,000 to \$173,000, and ordered him to return \$585,000, plus interest, in overpayments. The cost savings by correcting future overpayments were projected at more than \$1.2 million.

Nowicki subsequently sued CCCERA and the fire district, claiming that his pension had been wrongfully reduced.

In his suit against MOFD, Nowicki claimed breach of his employment contract and breach of the duty of dealing in good faith. He claimed that if CCCERA were successful in reducing his pension, then the fire district was responsible for making up the difference. The Contra Costa County Superior Court ruled against Nowicki in 2017, failing to determine how MOFD caused CCCERA to deprive Nowicki of his due process rights by reducing his pension, and finding no breach of employment agreement between Nowicki and MOFD. Nowicki appealed, and the appeals court upheld the court ruling. "(Nowicki) was required to file a timely government tort claim as a mandatory prerequisite to the filing of his complaint against the fire district. (Nowicki) failed to do so, and the claims are barred," read the court decision.

"We wanted the district to join with us in going after CCCERA," Nowicki said. "The district should have had a contractual obligation to defend me." The former chief said that he was disappointed that no one from the district attended his CCCERA hearing, and he offered guidance for the men and women of the district. "Don't be fooled into thinking that the district won't let you sink by yourself if you get into such a situation," Nowicki said.

Though the chief's suit against MOFD has been dismissed, the Superior Court did not dismiss Nowicki's case against CCCERA, and district counsel Jonathan Holtzman said that a hearing is scheduled for Feb. 5.

"We are loaded for the fight against CCCERA," Nowicki said. "I am defending the district's good name by myself, and I am flabbergasted that the district is not defending itself."

Holtzman, whose law firm took over as MOFD counsel in 2018, said he could not comment on what occurred prior to that date.

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