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FILED

OCT 26 2016

DANIEL D'ALESSANDRO, J.S.C.

CARMELO GARCIA,

Plaintiff,

v.

DAWN ZIMMER, in her Individual and Official Capacity as Mayor of Hoboken,  
JAKE STUIVER, in his Individual and Official Capacity as form Executive Director of the Hoboken Housing Authority;  
STAN GROSSBARD; the CITY OF HOBOKEN; DANA WEFER, in her Individual and Official capacity as Housing Authority Chairwoman, DAVID MELLO, in his individual and Official Capacity as the Vice-Chairman to the Hoboken Housing Authority and City of Hoboken Councilman;  
HOBOKEN HOUSING AUTHORITY;  
DAVID DENING, in his Individual and Official Capacity of Commissioner of the Hoboken Housing Authority; JUDITH BURRELL, in her Individual and Official Capacity as Commission of the Hoboken Housing

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: HUDSON COUNTY  
DOCKET NO. HUD-L-1881-16

CIVIL ACTION

**ORDER GRANTING DEFENDANTS  
DAWN ZIMMER AND STAN  
GROSSBARD'S MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT**

THIS MATTER having been opened to the Court by the Defendants, Dawn Zimmer and Stan Grossbard on Notice of Motion to Dismiss in lieu of an Answer, upon notice to all known parties of record, and the Court having read and considered all papers submitted in connection with this application, and for good cause having been shown;

IT IS ON THIS 26 DAY OF October, 2016;

~~ORDERED~~ that the Defendants' Motion to Dismiss Plaintiff's Complaint is hereby  
GRANTED;

*Denied*

~~ORDERED~~ that Plaintiff's Complaint is hereby dismissed as to Defendant Dawn  
Zimmer with prejudice; and it is

~~ORDERED~~ that Plaintiff's Complaint is hereby dismissed as to Defendant Stan  
Grossbard with prejudice; and it is

**FURTHER ORDERED** that, within 7 days after the moving party receives a filed  
copy of this Order, a true copy of this Order must be served upon all parties.

*Daniel D'Alessandro*

DANIEL D'ALESSANDRO, J.S.C. J.S.C.

Opposed

Unopposed

*Sent by fax to Plaintiff's attorney  
Attached*

CARMELO GARCIA,  
Plaintiff,

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: HUDSON COUNTY  
DOCKET NO. HUD-L-1881-16

v.

DAWN ZIMMER, in her individual and official capacity as Mayor of Hoboken; JAKE STUIVER (improperly pled as "Jake Stuvier" and former Executive Director of the Hoboken Housing Authority), in his individual and official capacity as former Chairman of the Housing Authority; STAN GROSSBARD; CITY OF HOBOKEN; DANA WEFER, in her individual and official capacity as Housing Authority Chairwoman; DAVID MELLO, in his individual and official capacity as the Vice-Chairman to the Hoboken housing Authority and City of Hoboken City Councilman; HOBOKEN HOUSING AUTHORITY; JAMES STANFORD, in his individual and official capacity as Commissioner of the Hoboken Housing Authority; DAVID DENING in his individual and official capacity as Commissioner of the Hoboken Housing Authority; JUDITH BURRELL in her individual and official capacity as Commissioner of the Hoboken Housing Authority;

Defendants.

Civil Action

STATEMENT OF REASONS

FILED  
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DANIEL D'ALESSANDRO, J.S.C.

DANIEL D'ALESSANDRO, J.S.C.

**PARTIES**

Plaintiff, Carmelo Garcia, alleges that defendants, Mayor Dawn Zimmer and Stan Grossbard coordinated and conspired with the defendants, Jake Stuiver, Dana Wefer, David Mello, James Sanford, David Denning, Judith Burrell and the Hoboken Housing Authority ("HHA") to orchestrate the termination of plaintiff's employment contract with the HHA. Plaintiff alleges that the overarching purpose of this conspiracy was to further the political agenda and unlawful policies of Mayor Zimmer.

**PROCEDURAL HISTORY**

Plaintiff initiated this lawsuit on August 12, 2013 alleging that Mayor Dawn Zimmer, Stan Grossbard, and the HHA had engaged in "ethnic cleansing" resulting in violations of Conscientious Employee Protection Act ("CEPA"), N.J.S.A. 34:19-1, New Jersey Civil Rights Act ("NJCRA"), N.J.S.A. 10:6-1, and New Jersey Law Against Discrimination ("NJLAD"), N.J.S.A. 10:5-1, tortious interference with contract and prospective economic advantage ("Garcia I").

Plaintiff initiated a second lawsuit on October 27, 2014 ("Garcia II"). This suit included additional claims

for free speech retaliation, race discrimination and/or hostile work environment, breach of contract and a violation of New Jersey Racketeer Influenced and Corrupt Organizations Act ("NJRICO"). Garcia I and Garcia II were consolidated by the court. Judge Barry Sarkisian, J.S.C. dismissed the NJRICO count, permitting the plaintiff to amend within thirty days, but denying Defendants' motion to dismiss the NJLAD and NJCRA claims. In his oral opinion, Judge Sarkisian noted that the "political battle" between the parties was insufficient for a NJRICO complaint. He summarized plaintiff's allegations as to Zimmer and Grossbard:

"Mayor Zimmer attempted to take control of HHA's everyday operations and award governmental contracts, make personal decision and initiate construction projects based on political affiliation in violation of New jersey's criminal bribery statute, theft by extortion, conduct unbecoming a political official. Plaintiff also averred that Grossbard, who was Zimmer's political advisor, husband and former chairman, Stuiver conspired with Zimmer and Hoboken to coordinate Zimmer's policies within the HHA and conspired to threaten Plaintiff's employment because of his refusal to support the Mayor. Plaintiff however, did not - underline "did not", provide any specific

examples except for Zimmer allegedly telling plaintiff to remove HHA chairwoman Rodriguez..."

After Judge Sarkisian's ruling, the parties proceeded with discovery on the NJLAD and NJCRA under the consolidated docket number. Plaintiff again sought to amend his complaint to include the NJRICO claim but was again denied by Judge Costello. After an unsuccessful mediation, the parties entered into a tolling agreement, providing that any applicable statute of limitations be tolled, prior discovery is admissible and any prior ruling shall have full force and effect.

Plaintiff filed this Complaint on May 6, 2016 alleging violations of NJCRA, N.J.S.A. 10:6-1, NJLAD, N.J.S.A. 10:5-1, NJRICO, N.J.S.A. 2C:41-2(c), (d).

#### BACKGROUND FACTS

Plaintiff alleges that defendants threatened the plaintiff and his employment because of his race, his opposition to Mayor Zimmer's policies, his refusal to participate in her unlawful efforts and disclosure of his policies to law enforcement agencies. Plaintiff asserts that Mayor Zimmer and Mr. Grossbard sought to control him, as the Executive Director of the HHA, and actually did control the HHA Board of Commissioners to effectuate Mayor

Zimmer's unlawful policies. The seven-member HHA Board of Commissioners is independent. The Hoboken City Council appoints five Commissioners, the Governor appoints one and the Mayor appoints only one commissioner.

Plaintiff alleges that he conversed with Mayor Zimmer, and she directly sought his support, but plaintiff refused and continued to object to "Mayor Zimmer's scheme." In addition, Plaintiff generally claimed that Mayor Zimmer's political supporters threatened his employment.

Plaintiff asserts that Mr. Grossbard served as a political advisor to Mayor Zimmer, and as de facto general counsel to HHA and Stuiver. Plaintiff claims that Mr. Grossbard expressed his opinions regarding the HHA and plaintiff to then HHA Chairman Jake Stuiver and two other HHA commissioners and drafted legal documents including a draft resolution for the termination of plaintiff's employment contract. Regardless of the alleged efforts to threaten plaintiff's employment, plaintiff admits he was not deterred and continued to object to Mayor Zimmer's policies.

Lastly, plaintiff alleges that the defendants created and participated in an enterprise in violation of NJRICO to engage in political patronage and gain political power.

Plaintiff asserts that defendants engaged in the following racketeering activities: (1) bribery, (2) theft by extortion, (3) official misconduct, and (4) corruption of a public resource. Plaintiff also contends that the defendants directly solicited donations, threatened plaintiff's employment, exerted control over those not within the scope of authority and commandeered HHA contracts.

#### STANDARD OF REVIEW

[T]he test for determining the adequacy of a pleading [on a motion to dismiss for failure to state a claim upon which relief can be granted is] whether a cause of action is suggested by the facts. [T]he inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint. [The] court searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary. At this preliminary stage of the litigation the Court is not concerned with the ability of Plaintiffs to prove the allegation contained in the complaint. For the purposes of analysis plaintiffs are entitled to every reasonable inference of fact. The examination of a complaint's allegations of fact required by the aforesated principles should be one that is at once painstaking and undertaken with a generous and hospitable approach.

Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (citing R. 4:6-2(e)) (quotation marks and other citations omitted). The court must "assume the facts as asserted by plaintiff are true and give her the benefit of all inferences that may be drawn in her favor." Banco Popular N. Am. V. Gandi, 184 N.J. 161, 166 (2005) (quoting Valentzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). The Court may consider documents referenced in the pleadings without converting the motion into one for summary judgment. See, e.g. N.J. Sports v. Bostick Promotions, 405 N.J. Super. 173, 178 (Ch. Div. 2007). The court strictly adhered to this standard of review.

#### DISCUSSION

##### Mayor Zimmer

###### 1. NJCRA

The law of the case doctrine describes "the principle that where there is an unreversed decision of a question of law or fact made during the course of litigation, such decision settles that question for all subsequent stages of the suit." Slowinski v. Valley Nat'l Bank, 264 N.J. Super. 172, 179 (App. Div. 1993); see also State v. Reldan, 100 N.J. 187, 203 (1985). The doctrine is grounded in the policy that once an issue is litigated and decided in a

suit, relitigation of that issue should be avoided if possible. State v. Hale, 127 N.J. Super. 407, 410 (App. Div. 1974). Prior decisions on legal issues should be followed unless there is substantially different evidence at a subsequent trial, new controlling authority, or the prior decision was clearly erroneous. See, e.g. State v. Reldan, supra, 100 N.J. at 204.

Pursuant to Judge Maron's May 23, 2014 order, "On March 6, 2014, this Court was presented with amended pleadings. On those pleadings, the Court found that the NJCRA claim was sufficient as a matter of law. The facts more clearly characterized Plaintiff as having been threatened, thus invoking the NJCRA." Similarly, Defendant Mayor Zimmer's motion to dismiss the NJCRA claims was again dismissed by Judge Sarkisian on June 1, 2015.

This matter has previously been adjudicated twice and the plaintiff has supplemented his pleading with additional facts. The defendants' motion to dismiss pursuant to the NJCRA claims is denied.

## 2. Official Capacity v. Individual Capacity

Mayor Zimmer has been sued both in her individual and official capacity. Defendant alleges that considering that the City of Hoboken is also being sued, the official capacity is a duplicative claim. An "[individual]-capacity suit seeks to impose personal liability upon a government official for actions he takes under color of state law." Ky. v. Graham, 473 U.S. 159, 165-67 (1985). On the contrary, an official capacity claim is generally another way of stating an action against the entity. Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 544 (1986).

Judge Maron had previously decided in this very issue that Plaintiff had sufficiently stated an NJCRA claim against Mayor Zimmer.

Furthermore, plaintiff alleges that there is no legal authority either under the Court Rules or Section 1983 jurisprudence that prevents a plaintiff from suing both the municipality and the government official in his official capacity.

It is well settled that local government officials sued in their individual capacity are not liable for the good faith performance of their activities. Harlow v. Fitzgerald, 457 U.S. 800, 814 (1982). The Supreme Court

has "repeatedly stressed the importance of resolving immunity questions at the earliest possible stage in litigation." Hunter v. Bryant, 502 U.S. 224, 227 (1991).

Although defendant alleges that Mayor Zimmer is entitled to qualified immunity; plaintiff contends that the Mayor is not protected by qualified immunity because it does not apply when a public official is engaged in intentional acts of discrimination. Pursuant to Saucier v. Katz, the analysis of qualified immunity involves two questions: (1) whether the officer's conduct violated a constitutional right and (2) whether any such constitutional right was clearly established. Saucier v. Katz, 533 U.S. 194, 201 (2001). Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982) (holding that qualified immunity must not be used as a shield to protect official misconduct and abuse). Plaintiff asserts that the allegations defeat any assertion of qualified immunity since unlawful discrimination and political retaliation are clearly unlawful and no reasonable government official would have assumed that they were lawful.

Judge Sarkisian previously ruled on the record that the issue of qualified immunity could not be decided until

all of the facts of the case were established. This court agrees.

Plaintiff alleges that Mayor Zimmer and her agents, including her husband, not only participated in all personnel decisions, but were also able to control the awarding of professional contracts within the HHA. Further they were able to set and affect the conditions of Plaintiff's employment as they were able to influence the HHA Board of Commissioners in criticizing Plaintiff's work and in the evaluation of his performance. These facts coupled with Judge Maron and Judge Sarkisian's orders form the basis to deny the motion as to the individual and official capacity claims against Mayor Zimmer.

### 3. NJLAD

Judge Sarkisian previously dismissed the motion to dismiss pursuant to the NJLAD claims on June 1, 2015. He found sufficient facts to support both an aiding and abetting and retaliation claim under NJLAD. NJLAD provides that an employer may not act based on:

[T]he race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, sex, gender identity or expression, disability or atypical hereditary cellular or blood trait of

any individual, or because of the liability for service in the Armed Forces of the United States or the nationality of any individual, or because of the refusal to submit to a genetic test or make available the results of a genetic test to an employer, to refuse to hire or employ or to bar or to discharge or require to retire, unless justified by lawful considerations other than age, from employment such individual or to discriminate against such individual. .

[N.J.S.A. 10:5-12(a)]

To advance a prima facie case of discrimination under the NJLAD, a plaintiff must show that he was in a protected class, that he was performing his job at a level that met the employer's legitimate expectations, that he was nevertheless subject to an adverse employment action, and that his employer sought someone else to perform the same work after he left. See DeWees v. RCN Corp., 380 N.J. Super. 511, 523 (App. Div. 2005) (citing Mogull v. CB Commercial Real Estate Group, Inc., 162 N.J. 449, 462 (2000)).

Plaintiff asserts they are able to establish that defendant Zimmer aided and abetted the NJLAD violations against Plaintiff as de facto joint employer with HHA. The Third Circuit has laid out a joint employer test. In Re Enterprise Rent-A-Car Wage & Hour Employment Practices Litig., 683 F.3d 462, 467-68 (3d Cir. 2012). The Third Circuit concluded that when determining whether someone is an employee under the FLSA, "economic reality rather than

technical concepts is to be the test of the employment."

Id. at 468-69. (quoting Goldberg v. Witaker House Co-op, Inc. 366 U.S. 28, 33 (1961)). The Third Circuit concluded that "where or two or more employers exert significant control over the same employees—whether from the evidence it can be shown they share or co-determine those matters governing essential terms and conditions of employment — they constitute joint employers." Enter. Rent-A-Car, supra, 683 F.2d at 468. They are liable as joint employers because they exercised control over Plaintiff's work evaluations, controlled the conditions of his employment, and demonstrated their managerial control by causing HHA to terminate his employment.

Plaintiff asserts that he has demonstrated in his complaint that Mayor Zimmer provided substantial assistance and acted in concert with Chairwoman Wefer and Vice-Chairman Melo to terminate plaintiff's employment. Although Mayor Zimmer was not his direct employer, she allegedly asserted control over his employment, and in the end influenced the decision to terminate plaintiff based on his failure to comply with her political agenda. Plaintiff has established a *prima facie* case for his claim of discrimination based on race.

New Jersey Courts have adopted analysis under McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). The burden shifting analysis articulated in McDonnell requires the plaintiff to show that he (1) belongs to a protected class; (2) performing the job at a level that met the employer's legitimate expectations, (3) suffered adverse employment action; and (4) replaced by someone outside his protected class, fired under circumstances that raise an inference of unlawful discrimination, or the position remained open.

Plaintiff alleges that the HHA terminated plaintiff, in part, because of his race/ethnicity despite his satisfactory work performance as HHA executive director. Defendant, HHA, was at all times plaintiff's employer. Plaintiff was replaced by two white males.

The NJLAD motion is denied considering both the allegations in the amended complaint and the previous orders of Judge Maron and Judge Sarkisian.

#### 4. NJRICO

Defendant contends that plaintiff has inadequately pled an NJRICO claim against Mayor Zimmer because Plaintiff (1) lacks standing, (2) cannot establish that an injury

occurred because of a racketeering activity, and (3) cannot satisfy the *prima facie* requirements of a NJRICO claim.

Plaintiff alleges that to prove a conspiracy to violate NJRICO under N.J.S.A. 2C:41-2d, plaintiff must present evidence that defendant agreed to participate directly or indirectly in the conduct or affairs of the enterprise by agreeing to commit, or to aid other members of the conspiracy to commit, at least two racketeering acts (N.J.S.A. 2C:41-1a.(1) and (2); N.J.S.A. 2C:41-1d. (1)); and that he or she acted knowingly and purposely with knowledge of the unlawful objective of the conspiracy and with the intent to further its unlawful objective.

NJRICO is more liberal than its federal counterpart on substantive matters. Horowitz v. Marlton Oncology, 116 F.Supp. 551 (D.N.J. 1999). NJRICO is also less restrictive with respect to defining what constitutes a "pattern of racketeering activity." In H.J. Inc. v. Northwestern Telephone Co., 492 U.S. 229 (1989), the United States Supreme Court held that proof of a pattern of "racketeering activity" requires a showing of both "continuity" and "relatedness" of predicate acts.

NJRICO differs from the federal statute when it comes to establishing when a person has participated in the

conduct of the affairs of an enterprise. In Reeves v. Ernst & Young, 507 U.S. 170 (1993), the United States Supreme Court interpreted the phrase "to conduct or participate, directly or indirectly, in the conduct of the enterprise's affairs," as requiring a federal RICO defendant to have a role in directing the affairs of an enterprise.

#### Standing

Standing requires that the plaintiff show "a concrete financial loss and not mere injury to a valuable intangible property interest." Anderson v. Ayling, 396 F.3d 265, 271 (3d Cir. 2005) (quoting Steele v. Hospital Corp. of Am., 36 F. 3d 69, 70 (9<sup>th</sup> Cir. 1994)). "[J]ob loss, is one that has been found not normally to create RICO standing. Id. However, plaintiff has shown that his loss was due to actions taken by Mayor Zimmer and Hoboken. He has alleged sufficient facts to show that Mayor Zimmer's actions caused him harm. Anderson, which defendant relies on is federal authority. The federal law is inapplicable since NJRICO is substantively broader and more liberally applied than its federal counterpart. Plaintiff has sufficient standing to assert an NJRICO claim against defendants.

### Cause of Action

The pleadings are sufficient to satisfy the causation argument, especially when assumed to be true as required under R. 4:6-2(e). The complaint sufficiently alleges that defendants' actions were not only the "but for" cause, but also the proximate cause of his injury. Plaintiff alleges that the predicate actions were the direct cause of his injury and that defendant's unlawful actions were directed at him with the intent to cause him harm. Specifically, the termination by Mayor Zimmer allegedly constituted official misconduct through exertion of control over persons not within the scope of her official duties with intent to harm. Additionally, theft by extortion was directed at plaintiff by Mayor Zimmer through her alleged threatening to take employment action against Garcia if he did not comply with her policy demands.

### Prima Facie Case

On April 6, 2016, Judge Sarkisian dismissed the NJRICO count of the complaint in Garcia II:

"Mayor Zimmer attempted to take control of HHA's everyday operations and award governmental contracts, make personal decisions and initiate construction projects based on political affiliations in violation of New Jersey's criminal bribery statute,

theft by extortion, conduct unbecoming a political official. Plaintiff also averred that Grossbard, who was Zimmer's political advisor, husband and former chairman, Stuiver conspired with Zimmer and Hoboken to coordinate Zimmer's policies within the HHA and conspired to threaten plaintiff's employment because of his refusal to support the Mayor. Plaintiff, however, did not - underline "did not", provide any specific examples except for Zimmer allegedly telling plaintiff to remove HHA Chairwoman Rodriguez..."

Judge Sarkisian dismissed Plaintiff's NJRICO claim previously without prejudice, thus allowing plaintiff to file an amended complaint with additional details to support his allegations. Plaintiff's complaint has since added numerous facts to support Mayor Zimmer's involvement as a conspirator in the racketeering actions necessary to support an NJRICO claim.

The amended complaint alleged in detail that Mayor Zimmer controlled plaintiff's employment and terminated his employment for the purposes of harming or injuring him, and that she embezzled government resources to retaliate against Garcia. Accordingly, Mayor Dawn Zimmer's motion to dismiss is denied.

Stan Grossbard

1. NJCRA

The NJCRA provides that a person may bring a NJCRA civil action under two circumstances: (1) when he's deprived of a right, or (2) when his rights are interfered with by threats, intimidation, coercion or force."

Felicioni v. Admin. Office of Courts, 404 N.J. Super. 382, 400 (App. Div. 2008).

Defendant believes that Plaintiff fails to state a claim against Defendant, Grossbard, under NJCRA because: (1) Grossbard is a private citizen who did not have a "pre-arranged plan" with the state, or substitute the will of the state with this own judgment and (2) there is no causal link between the constitutionally protected conduct and the supposed retaliatory action.

However, plaintiff contends that Grossbard, (1) served as a political advisor to Mayor Zimmer and de facto general counsel to HHA and Jake Stuiver; (2) engaged in unauthorized practice of law; (3) drafted legal documents, including a resolution to terminate Plaintiff; and (4) threatened Plaintiff's employment at a lunch meeting. The basis for these allegations is emails between Grossbard and Stuiver, where Grossbard expresses his opinion regarding

HHA issues including Plaintiff's employment contract. The emails are not disputed.

Plaintiff contends that in Adickes v. S.H. Kress & Co., 398 U.S. 144, 152 (1970), the Supreme Court held that a private actor could be held liable under § 1983 if the plaintiff can show a conspiracy. "Courts have deemed private entities to be 'state actors' under a variety of tests. The test applicable here is the 'joint action test,' where a private party will be deemed a state actor if it is a "willful participant in joint action with the State or its agents." Cahill ex rel. L.C. v. Live Nation, 512 Fed. Appx. 227, 230 (3d Cir. 2013). Plaintiff alleges, that Mr. Grossbard and Mayor Zimmer were acting in concert with one another and that Mr. Grossbard was a willful participant with Mayor Zimmer in threatening and retaliating against plaintiff because of his protected speech and refusal to implement Mayor Zimmer's unlawful and discriminatory practices. Plaintiff's complaint alleges with factual support that Mr. Grossbard acted in concert to threaten, harass, and to terminate Garcia's employment.

Plaintiff alleges that defendants conspired to violate his first amendment freedom of speech and association rights. In order to successfully claim a First Amendment

retaliation claim, "a plaintiff must show (1) constitutionally protected conduct, (2) retaliatory action sufficient to deter a person of ordinary firmness from exercising his constitutional rights, and (3) a causal link between the constitutionally protected conduct and the retaliatory action." Islam v. City of Bridgeton, 804 F. Supp. 2d 190, 199 (D.N.J. 2011).

Judge Maron previously decided that Plaintiff had sufficiently stated an NJCRA claim against Mr. Grossbard and his wife Mayor Dawn Zimmer. In doing so, Judge Maron further found that threats to employment were actionable under the NJCRA. Judge Maron's opinion stated that Plaintiff had sufficiently stated claims under the NJCRA Mayor Zimmer, but also against Stan Grossbard as a co-conspirator. Mr. Grossbard's motion to dismiss the NJCRA claims was again dismissed by Judge Sarkisian in 2015. Judge Sarkisian found that Plaintiff's complaint was sufficient to establish a cause of action against Grossbard under the NJCRA. Accordingly, this court again denies the motion to dismiss against Stan Grossbard pursuant to NJCRA.

## 2. NJRICO

Defendant alleges that plaintiff has not pled a plausible NJRICO claim against Mr. Grossbard because

plaintiff: (1) lacks standing, (2) cannot establish that an injury occurred because of a racketeering activity, and (3) cannot satisfy the prima facie requirements of a NJRICO claim. However, defendant's interaction with HHA commissioners may be a sufficient basis to determine involvement with his termination.

#### Standing

The federal law is inapplicable since NJRICO is substantively broader and more liberally applied than its federal counterpart. Plaintiff has sufficient standing. Plaintiff contends that Mr. Grossbard was actively involved in providing material legal assistance to the HHA to terminate Garcia's employment. Specifically, Mr. Grossbard supervised and implemented Mayor Zimmer's policies.

#### Cause of Action

Defendant, Grossbard's email exchange with HHA commissioners may be a sufficient basis to conclude he had involvement and possibly exerted some control over the board influencing their decision of termination. Specifically, because he mentioned his dissatisfaction with Plaintiff's employment.

Plaintiff alleges that Mayor Zimmer and Mr. Grossbard improperly took control of the Board of Commissioners, and

allegedly exerted their influence to have plaintiff terminated from his position as Executive Director based in part on his refusal to comply with Mayor Zimmer's policies. This is a sufficient basis to allegedly establish causation between Grossbard's actions and plaintiff's termination at this stage of the proceedings.

#### Prima Facie Requirements

As previously stated above, the emails in it of themselves, which state there was dissatisfaction with plaintiff's employment provide a nexus between Grossbard's influence and plaintiff's termination. Under the standard of R. 4:6-2(e), if the facts are assumed true, the motion is denied since there is a sufficient basis for the claims against Stan Grossbard.

#### CONCLUSION

Accordingly, Mayor Zimmer and Stan Grossbard's motion to dismiss is denied.