



## **Plaintiff Ordered to Pay \$75,000 to Defendant as Sanction for Submitting False Affidavit**

Courts do not readily issue sanctions awards against litigants, but their patience has its limits. A recent decision issued by the Massachusetts Superior Court provides an example of the type of conduct that can place a litigant on the receiving end of a harsh sanctions award.

In *Siew-Mey Tam v. Fed. Mgmt. Co.*, the plaintiff, Siew-Mey Tam (“Tam”), filed a putative class action against defendant Federal Management Co. (“Federal”) and others alleging that Federal improperly classified her as a salaried, exempt employee and violated G.L. c. 151, § 1A by failing to pay overtime compensation. Plaintiffs initially succeeded in certifying the case as a class action, relying in part on an affidavit submitted by Tam. The court subsequently allowed Federal’s motion to decertify the class upon finding that Tam made numerous materially false and misleading statements in her affidavit.

Federal then moved for summary judgment. In opposition to that motion, Tam submitted a second affidavit that repeated many of the factual misstatements from her first affidavit. She also submitted a 32-page errata sheet that sought to substantially revise her deposition testimony to reconcile it with her affidavits. The court allowed Federal’s summary judgment motion, finding that Federal had properly classified Tam as an exempt employee.

Federal then filed a motion for sanctions against Tam pursuant to G.L. c. 231, § 6F, which the court denied. Although the court stated its belief that Tam submitted testimony that was at least “recklessly inaccurate,” it did not believe that § 6F was designed to address that type of conduct and could not determine whether the classification claim was not advanced in good faith. The court raised the possibility that Federal could bring a sanctions motion on another basis.

Federal accordingly brought a renewed motion for sanctions pursuant to Mass. R. Civ. P. 56(g) and the inherent powers of the court. Federal sought to recover the attorneys’ fees incurred in relation to summary judgment. The court allowed the motion and inferred that misstatements in the affidavits stemmed solely from “Tam’s strong desire to delay the entry of summary judgment.” Therefore, in light of the “serious and repeated nature” of Tam’s misconduct, the court ordered Tam to pay Federal \$75,000 within 21 days of its order.

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OCM Law 1 Van De Graaff Dr. Burlington, Massachusetts 01803 United States (781) 359-9000