

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

LON M. FLUMAN,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. _____
	:	
REGAL CONTRACTORS, LLC,	:	
REGAL BUILDERS, LLC, and	:	
NOBLE POND HOMES	:	
	:	Jury Trial Demanded
Defendants.	:	

COMPLAINT

Plaintiff Lon M. Fluman (“Fluman”), by and through the undersigned, alleges the following:

1. This civil action is brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301, *et seq.*, (“USERRA”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 38 U.S.C. § 4323(b).

3. Venue is proper in this district under 38 U.S.C. § 4323(c) because all Defendants are located in, and have places of business within, this judicial district.

4. Venue also is proper under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to this lawsuit occurred in this judicial district.

PARTIES

5. Plaintiff, Lon M. Fluman, is a citizen of the State of Delaware.

6. Defendants Regal Contractors, LLC, Regal Builders, LLC and Noble Pond Homes (“Defendants”) have a business office located at 13 Nobel’s Pond Crossing, Dover, DE 19904 – 1296. The Defendants are “employers” within the meaning of 38 U.S.C. § 4303(4)(a).

FACTUAL ALLEGATIONS

7. Fluman was employed by Defendants from January of 2012 until December 3, 2012. In his position with Defendants, Fluman’s job responsibilities included all-around handyman-type duties at construction sites, as well as cleaning swimming pools and emptying trash in the office. Fluman’s job responsibilities also included assisting Defendants during weekends when Defendants would stage open house events to show properties for sale.

8. Fluman has been a member of the United States Air Force Reserves stationed in Dover, DE from May of 2009 until the present. In that capacity, he has military obligations one weekend a month, as well as a two-week-per-year full-time obligation. Fluman advised Defendants of these obligations at the time he was hired.

9. In May of 2012, Fluman was advised by his unit that he would be activated for his two-week summer military training on September 3, 2012. He promptly advised his supervisor of that date. On August 30, 2012, Fluman’s unit informed him that his two-week duty would commence on September 4, 2012, one day later than previously scheduled. Fluman advised his supervisor on either August 30 or September

1, 2012 of the one-day delay. Following his return from the two-week training, Fluman resumed work on his next scheduled work day.

10. Fluman was scheduled to work an open house event on December 1-2, 2012, but gave notice to his employer prior to that event that he would not be able to work that weekend due to reserve training duty. Fluman attended reserve training duty on December 1-2, 2012, and returned to work on December 3, 2012.

11. On Monday, December 3, 2012, Fluman was advised that his employment with Defendants was terminated. Despite satisfying the notice requirements of USERRA, Defendants told Fluman that the reason for his termination was that he had given insufficient notice of his two week absence for military training in September.

**DISCRIMINATION AGAINST FLUMAN BASED ON HIS ACTIVE DUTY
MILITARY SERVICE IN VIOLATION OF 38 U.S.C. § 4311.**

12. Fluman repeats the allegations in paragraphs 1 through 11.

13. Defendants discriminated against Fluman, in violation of Section 4311 of USERRA, 38 U.S.C. § 4311, by terminating Fluman's employment under the pretext that he had failed to provide adequate notice of his military service obligation. Fluman satisfied USERRA's notice provisions by providing his employer with advance notice of his September 2012 military leave and advance notice of the change in his departure dates.

14. Defendants cannot establish that they would have taken the same action without regard to the Fluman's protected status because Defendants have admitted to basing their decision upon his properly noticed military obligation.

15. Defendants' violation of USERRA was willful. Not only did Defendants terminate Fluman under the pretext of failing to provide adequate notice of his

September military obligation, the termination occurred in December immediately after he was unable to attend an open house because of his weekend military service obligation.

PRAYER FOR RELIEF

Wherefore, Fluman prays that the Court enter judgment against Defendants and further, that the Court:

16. Declare that Defendant's termination of Fluman was unlawful and in violation of USERRA;
17. Order Defendants to pay Fluman for lost wages and benefits suffered by reason of Defendants' violations of USERRA, including back pay and front pay;
18. Declare that Defendants' violation of USERRA was willful;
19. Order that Defendants pay Fluman as liquidated damages an amount equal to the amount of his lost wages and benefits suffered by reason of Defendants' willful violations of USERRA;
20. Award prejudgment interest on the amount of lost wages and benefits found due;
21. Enjoin Defendants from taking any action with respect to Fluman that fails to comply with the provisions of USERRA; and
22. Grant such other and further relief as may be just and proper together with the costs and disbursements of this lawsuit.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury.

Respectfully submitted,

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