

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

CIVIL ACTION
NO. 1:09-cv-10309

NANCY GILL & MARCELLE LETOURNEAU,)
MARTIN KOSKI & JAMES FITZGERALD,)
DEAN HARA,)
MARY RITCHIE & KATHLEEN BUSH,)
MELBA ABREU & BEATRICE HERNANDEZ,)
MARLIN NABORS & JONATHAN KNIGHT,)
MARY BOWE-SHULMAN &)
DORENE BOWE-SHULMAN,)
JO ANN WHITEHEAD & BETTE JO GREEN,)
RANDELL LEWIS-KENDELL, and)
HERBERT BURTIS,)

Plaintiffs,)

v.)

OFFICE OF PERSONNEL MANAGEMENT,)
UNITED STATES POSTAL SERVICE,)
JOHN E. POTTER, in his official capacity as)
the Postmaster General of the United States of)
America,)
MICHAEL J. ASTRUE, in his official capacity)
as the Commissioner of the Social Security)
Administration,)
ERIC H. HOLDER JR., in his official capacity)
as the United States Attorney General, and)
THE UNITED STATES OF AMERICA,)
Defendants.)

AFFADAVIT OF RANDELL LEWIS-KENDELL



I, Randell Lewis-Kendell, being duly sworn, hereby depose and say as follows:

1. My name is Randell Lewis-Kendell and I reside in Harwich Port, Massachusetts.
2. I am the surviving spouse of a 30-year, deeply committed relationship with Robert Lewis-Kendell (“Robert”).
3. Robert died in November 2007, at age 72, after losing his long battle with recurrent colon cancer. I was at his side when he died.
4. Robert and I felt marriage was very important to us, and we married as soon as we were able to do so. After 27 years together as a committed couple, we were legally married on May 21, 2004, in Harwich Port, Massachusetts. Robert and I married to solidify our lifelong commitment. At the time of our marriage, we were both well aware of the serious nature of Robert’s illness.
5. Robert and I began our relationship in 1977 while we were both living in Connecticut. Our relationship was rooted in deep love and close friendship.
6. Our families and community members welcomed our relationship from early on. Robert’s now adult children have always treated me as their stepfather. When Robert’s children were school-aged, I attended parent-teacher conferences with Robert.

Now Robert's children are grown, and their children call me "grandpa." I have always felt embraced by Robert's family, and I feel blessed because that warmth has continued even after his death.

7. In 1985, we moved together to Massachusetts. Robert was from a Boston suburb and he was eager to return to Massachusetts when the opportunity arose. Robert began working in fundraising and development. I worked in retail and became a manager at several stores.

8. In 1993, Robert and I realized our mutual dream of relocating to a small town on Cape Cod when we purchased a gift shop in Harwich Port, the Cranberry Goose.

9. Through our gift shop, Robert and I quickly became an integral part of the local business community. We also became active in our local church.

10. When we first moved to Harwich Port, we rented a house in West Dennis, while we worked to establish our gift shop. Because we reinvested all the money we earned in the business, we initially could not afford to purchase our own home in Harwich Port.

11. As time went on, we were fortunate to be able to purchase a small condominium in Harwich Port in 2006.

12. In 2002, Robert was diagnosed with colon cancer. Initially, he was treated with surgery and monitoring but then, in 2004, there was a recurrence, and Robert's prognosis became far more serious. In 2004, Robert began chemotherapy treatments.

13. I took Robert to every medical appointment, including appointments in Boston. I sat with Robert through every treatment and administered needed medications

at home. When necessary, I would close our gift shop to care for Robert. As Robert's condition worsened, I stayed with him at all times and took care of him.

14. I was at Robert's side when he died on November 14, 2007. Just before he died, we stayed up all night talking, sharing and affirming our commitment to each other. I remain committed to honoring Robert's memory and what he meant to me.

15. At the time of his death, Robert was receiving Social Security retirement benefits in the amount of \$1,161 per month based on his lifelong earnings record. This benefit was a critical source of support for us.

16. Since Robert passed away, I have lived in difficult economic circumstances. The very challenging economy has reduced tourism, negatively affecting sales at the gift shop.

17. When I made Robert's funeral arrangements, the funeral director informed me about the \$255 lump-sum death benefit from Social Security and mentioned that it could help me to defray some funeral expenses. The director made an application to social security on my behalf, just as he does for other surviving spouses. An employee of the funeral home expressed surprise and dismay that the benefit did not come through as it does for their other clients.

18. On December 21, 2007, I again applied for the lump-sum death benefit by going to the SSA office in Hyannis, Massachusetts. It was important to me to pursue this because I strongly believe I should be treated just like any other widower. I wish the denial of this \$255 did not make a difference to me financially, but it does.

19. The SSA denied my claim by letter dated April 16, 2008. The letter stated that: "Since the Defense of Marriage Act prohibits SSA from finding that you and the

insured were married for benefit purposes, you are not eligible for the lump sum death payment.”

20. I appealed because I think it is wrong for the federal government to dismiss my marriage to Robert, and to act like it didn't even exist.

21. My request for reconsideration was denied by the SSA in a letter dated November 19, 2008. I later entered into an Expedited Appeals Process (EAP) agreement with the SSA.

22. My experience of having my social security application denied was one of being treated unfairly during one of the most difficult periods of my life. I was mourning the loss of my husband, my life partner, and best friend, and the government was telling me that I don't count, that my marriage to Robert didn't count. This upset me deeply.

23. Another reason that I am pursuing the lump-sum benefit is because I am very worried down the road about not being able to access social security survivor benefits when I become age-eligible. Although both Robert and I always worked, Robert earned more than I did and, as his surviving spouse, I should be able to receive his benefit when I am old enough. I want to sort this out now and have my marriage treated fairly so that I can receive the correct benefit later on.

24. Because social security benefit amounts change each year, I cannot be sure exactly what amount I would be entitled to as Robert's surviving spouse once I become age-eligible. However, he was receiving \$1,161 per month at the time of his death, and so I would expect to receive at least that amount per month, which is approximately twice what I expect to receive based on my own earnings record as reflected by my

social security earnings statements. If I cannot access spousal survivor benefits, my anticipated loss will be approximately \$7,000 per year.

25. Because of my experience, I firmly believe that DOMA sends a message to businesses and others that my marriage was not real and this adds stress and confusion to everyday situations. For example, for many months after Robert's death, the mortgage company which held the mortgage on our home refused to speak with me because they didn't accept our marriage or understand my marital status. They did not think they had to recognize me or speak with me at all. I kept trying to call to negotiate the payments but they refused to speak with me even though I told them I was Robert's surviving spouse. Finally, after six months like this, I asked one of the mortgage company representatives "do you treat all surviving spouses this way?" and the representative seemed surprised and asked me to send my marriage certificate.

Signed under the pains and penalties of perjury on this 12th day of November, 2009.

/s/ Randell Lewis-Kendell

Randell Lewis-Kendell

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on November 17, 2009.

/s/ Gary D. Buseck

Gary D. Buseck