

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.)

JOINT AFFIDAVIT OF MARTIN KOSKI AND JAMES FITZGERALD



Martin Koski and James Fitzgerald, being duly sworn, hereby depose and state as follows:

1. Martin and James (“Jim”): We have been life partners for 34 years, since 1975. We assumed marriage would give us more legal protections and resolve any outstanding questions about our legal status and commitment to one another. We married on September 10, 2007 in a private ceremony in our home.

2. Martin and Jim: We live together in our jointly owned condominium in Bourne, Massachusetts. We plan our finances and futures based on our desire to protect and provide for one another. Jim: I am currently 58 years old. Martin: I am now 67 years old.

3. Martin: I am retired from the Social Security Administration (SSA), where I worked for a total of 21 years. I worked as a claims representative in Boston from 1968 to 1979, and then again from 1995 until 2005. I was 63 when I retired in 2005.

4. Jim: In 1979, we left Boston and moved to Florida. Martin’s father came to live with us in 1982. About nine years later, Martin’s father was diagnosed with lung

cancer. At that point, I spent much of my time caring for Martin's dad. I felt like he was a father to me and I believe I was like a son to him.

5. Martin: My father passed away in December 1994, with both of us at his side. In 1995, we returned to Boston.

6. Jim: For four years, I have been working as a recovery aide at a treatment center. I work 32 hours per week which is enough hours to qualify for health insurance through my employment. Health insurance is very important to me and Martin because I have severe asthma that must be monitored regularly and controlled with medications. Because my asthma is very serious, I am not certain how much longer I will be able to continue working. I am 58 years old and will not qualify for Medicare coverage until age 65. Being able to have health insurance through Martin's employment would really help me adjust my work hours and cover any gap in health care coverage.

7. Martin: As a former employee and retiree of the Social Security Administration (what they call a "qualified annuitant"), I am enrolled in the Federal Employees Health Benefits (FEHB) program.

8. Martin: Prior to October 5, 2007, I was enrolled in FEHB under a "Self-Only" plan covering only myself. Because I recognize how hard it is for Jim to work, after our marriage, I sought to enroll him in my health plan by changing my enrollment from "Self Only" to "Self and Family." The Office of Personnel Management ("OPM") declined to enroll us in the "Self and Family" plan and cover Jim as a "member of family," that is, as my spouse because of DOMA. I received a final reconsideration decision from OPM by letter dated July 1, 2008.

9. Martin: I believe our marriage should be treated like other marriages of retired federal employees. It disadvantages our family to be denied the same health coverage other federal retirees receive for their spouses. We have paid \$5,806 more in premiums, co-pays and prescription costs because Jim is not enrolled in my plan and has to use his inferior work plan. We expect these costs will continue to rise.

10. Martin and Jim: Since our marriage through the end of 2009, we will have paid at least \$2,367 more in premiums because Martin cannot enroll in the Self and Family plan. Jim pays for coverage at his workplace and Martin pays for his Self Only Plan. If we had to pay only for a Self and Family Plan, we would have saved:

- \$97 per month for 2007. Instead of paying for Jim's policy at a cost of \$263 monthly and Martin's self only plan at a cost \$125 per month for a total of \$388, we could have paid for the Self and Family plan at a monthly cost of \$291 for a savings of \$97 for each of the three months we were married;
- \$1,152 (\$96 per month) for 2008. Instead of paying for Jim's policy at a cost of \$276 and Martin's self only plan at a cost of \$135 per month for a total of \$411, we could have paid for the Self and Family plan at a monthly cost of \$315 per month for a savings of \$1,152 for all of 2008; and
- \$912 (\$76 per month) for 2009. Instead of paying for Jim's policy at a cost of \$281 and Martin's self only plan at a cost of \$152 per month for a total of \$433, we could have paid for the Self and Family plan at a monthly cost of \$357 per month for a savings of \$912 for all of 2009.

11. Martin: We have also paid more in co-pays, because Jim is not covered on my plan. For example, Jim had a colonoscopy this year where the co-pay under his

plan was \$233 and would have been zero under my plan. In addition, Jim's plan does not cover hearing aids, and repairs on his hearing aids cost us \$490 this year that would have cost \$73, or \$417 less under my plan. So far, the additional costs for co-pays is \$650.

12. Martin: We have also paid more in prescription costs because Jim is not covered under my plan. For 2007, the extra cost was \$226. For 2008, the extra cost was \$1,140. In 2009, we have already paid an extra \$1,060 in prescription costs and expect to pay an additional \$330 by the end of the year, for a total of \$1390. All totaled, the extra prescription costs since our marriage are \$2,756 and counting.

13. Martin: Apart from health insurance, my other concern is what happens to Jim if I die before he does. No one knows who will die first, but I am nine years older than he is. As things stand, if I die, my federal pension dies with me. This federal pension is a large percentage of our income and pays our mortgage every month. In addition, as things stand, Jim would not be eligible for the survivor benefit from social security. I am very concerned that he would not be able to afford living in our home – all because he will be denied survivor rights available to the surviving spouses of other retired federal employees.

14. Martin: Because of my concerns about what happens if I die first, and since other retired employees can select a survivor annuity benefit on their pensions, I wrote to OPM about doing so for Jim in October 2008. OPM denied my request for survivor annuity because of DOMA. That action has been dismissed without prejudice to my re-filing it by December 2010.

15. Jim and Martin: DOMA causes a lot of confusion for people in managing their affairs. When we bought our condominium, no one could really provide solid

guidance about how to take title because our marriage was not “like other marriages.” We also find tax preparation difficult because we file our income taxes as married filing jointly with the Commonwealth of Massachusetts but we then have to artificially disentangle our joint finances in order to file our federal income tax returns as “Single” filers. We do that by preparing a joint federal return that is not filed but used to calculate the state return and then filing separate returns.

16. Martin: I have an IRA with Fidelity but I cannot even list Jim as my spouse on that. I feel like everyone knows that a spouse has rights, and it concerns me that Jim doesn’t benefit from that same understanding.

17. Martin and Jim: We believe DOMA conveys disrespect for our marriage to the wider world, and tells people that we are two individuals rather than a couple. This is particularly concerning for us when we leave the state, and we worry that the legal papers we have will not be enough if there is an emergency and someone challenges our right to be by the other’s side.

Signed under the pains and penalties of perjury on this 10th day of November, 2009.

/s/ Martin Koski

Martin Koski

/s/ James Fitzgerald

James Fitzgerald

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