

# \$6M Awarded in Racial Bias Suit by Nursing Home Manager

Rebecca McCarthy, an African American woman, filed a lawsuit after she was fired from her \$190,000-per-year job as vice president of clinical leadership at Care One's facility in Bound Brook.

By **Charles Toutant** (<https://www.law.com/njlawjournal/author/profile/Charles-Toutant/>) | November 07, 2019 at 04:56 PM

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A Bergen County jury has awarded a \$6 million verdict, including \$4.13 million in punitive damages, in a racial discrimination suit by an administrator at a Care One nursing facility.

The punitive damages verdict was returned **Nov. 1** (<https://images.law.com/contrib/content/uploads/documents/399/34482/pun-dam.pdf>) and the compensatory damages verdict **Oct. 30** (<https://images.law.com/contrib/content/uploads/documents/399/34482/comp-dam.pdf>) in a lawsuit filed by Rebecca McCarthy, an African American woman fired from her \$190,000-per-year job as vice president of clinical leadership at the company's facility in Bound Brook.

McCarthy was fired the day after Alison Fitzpatrick-Durski became interim administrator of the Bound Brook facility. McCarthy said in the complaint that Fitzpatrick-Durski first asked her on Oct. 31, 2016, to consider returning to the position of clinical services consultant, a post she held at the company before being promoted to her present job. When McCarthy remained silent, Fitzpatrick-Durski allegedly told her "I don't want a black person walking around here in a suit as a VP. I want you in scrubs, flats and a lab coat." Fitzpatrick-Durski fired McCarthy the next day.

Fitzpatrick-Durski denied making any reference to race in her comments to McCarthy, and claimed she was instead encouraging McCarthy to engage in hands-on patient care when the nursing staff needed help, and to change into scrubs when necessary, according to court papers. The lawyer for Care One and Fitzpatrick was Christopher Capone of Fisher & Phillips. McCarthy was represented by Thomas McKinney and Paul Castronovo of Castronovo & McKinney.

McKinney says he believes the magnitude of the punitives award was prompted by the abrupt nature of McCarthy's termination, which runs contrary to a well-established corporate policy at Care One of providing a sequence of corrective actions to address employee performance issues. "Instead of following any type of progressive discipline, there was a termination of someone who had just received a major raise and promotion," McKinney said. Capone did not respond to a request for comment. A message left at Care One's corporate office about the case was not returned.

The verdict was issued following a seven-day trial before Judge John O’Dwyer. During the trial, McCarthy’s lawyers presented testimony accusing Fitzpatrick-Durski of referring to another black employee as a slave.

Care One’s counsel argued at trial that McCarthy was terminated for poor job performance, including failing to properly supervise staff. Those statements were refuted by testimony called on McCarthy’s behalf.

Care One also argued that McCarthy failed to mitigate her alleged damages because she applied for only 14 positions after she was fired, even though employment websites showed hundreds of openings for clinical service coordinators and directors of nursing.

McCarthy joined Care One in June 2016 in the position of clinical services consultant. But she resigned after only five weeks on the job. Care One executives offered her a promotion and gave her a raise and bonus in order to convince her to stay. She accepted the new position, and after two months she met goals set by Care One for increasing patient customer service ratings and reducing the use of nurses from outside agencies, according to court papers.

Care One, headquartered in Fort Lee, has more than 70 nursing homes and assisted living centers, including 30 in New Jersey. The company was founded in 1999 by Daniel Straus (<https://www.reuters.com/article/us-careone-assetsale-exclusive-idUSKBN0F52OU20140630>), a lawyer who was formerly with Paul, Weiss, Rifkind, Wharton & Garrison.

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