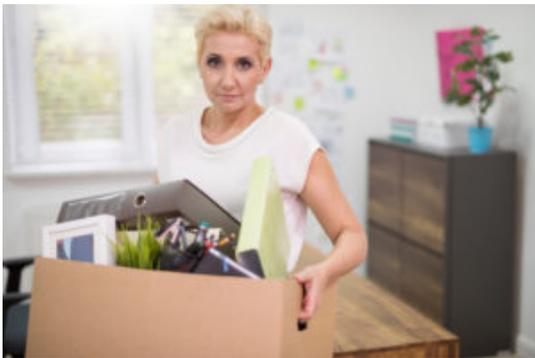


## Court Rules That Employee Can Not Sue Supervisor Who Fired Her

by Grant S. Gibeau - Wednesday, May 30, 2018



An employee who was terminated for violating her employer's conflict-of-interest policy can not sue her former supervisor after the supervisor discovered the conflict, conducted an investigation, and recommended that the employee be fired.

### Supervisor Learns Employee Opened a Competing Business

While working as a pharmacist for national pharmacy chain CVS, Stephani Martinsen founded her own pharmacy. Martinsen's pharmacy mainly created compounded pharmaceuticals that CVS did not dispense but which treated similar conditions to products sold by CVS. For example, Martinsen's business sold the drug *sublingual sildenafil*, which was used to treat the same condition as Viagra, which CVS did sell.

Martinsen's supervisor, Kara Engleka, discovered Martinsen's side-business and immediately conducted an investigation, interviewing Martinsen and reviewing the side-business's website. Engleka determined that Martinsen's side-business was in violation of CVS's conflict-of-interest policy on the basis that the pharmaceuticals sold by Martinsen competed for CVS's customers. Engleka recommended to CVS Human Resources that Martinsen be terminated. CVS agreed terminated Martinsen's employment.

Martinsen then sued Engleka for tortious interference with contract and defamation related to Engleka's actions during the investigation. Engleka moved for summary judgment (early dismissal) which the trial court granted, prompting Martinsen to appeal.

## **She Was Just Doing Her Job**

The Minnesota Court of Appeals **affirmed** the trial court's dismissal of the tortious interference claim, citing to the general principle that "[i]n Minnesota, a discharged employee may not sue the supervisor who fired her, because, if acting in good faith, the supervisor simply acts in furtherance of their employer's best interests." The Court found that Engleka was simply acting within the scope of her employment with CVS in investigating an alleged violation of company policy and recommending a course of action in response to the findings of that investigation.

In regard to the defamation claim, the Court explained that "[t]ruth is a complete defense against defamation" and although the truth or falsity of a statement is generally a question for the jury, it was undisputable that Martinsen, through her side-business, was directly competing with CVS.

The Court additionally found that Engleka's statements made during her investigation were legally privileged. A statement is subject to a conditional privilege and thus immune from a defamation claim if it is 1) made upon a proper occasion, 2) based on a proper motive, and 3) based upon reasonable or probable cause. The court found that Engleka's statements were entitled to qualified privilege because they were based on a sufficient investigation conducted as part of Engleka's job duties.

The Court additionally determined that there was no evidence to establish that Engleka acted with malice, which would have potentially defeated Engleka's privilege defense. Accordingly, Martinsen's defamation claims failed as a matter of law.

## **Bottom Line**

This case reminds us that as long as they are acting without malice and within the scope of their employment, supervisors are generally protected from liability regarding events arising out of employment termination decisions. Here, because Engleka's position required her to investigate incidents of employee misconduct, Martinsen was unable to successfully sue her when she did not like the conclusions that were reached or the consequences that followed.