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## Jury Shuts Down Delivery Worker's Disability Bias Suit

By **Emmy Freedman**

Law360 (January 11, 2023, 4:57 PM EST) -- A Manhattan federal jury rejected a former courier service worker's lawsuit claiming two managers taunted him when he had an on-the-job panic attack and the company then slashed his hours, finding he hadn't shown the delivery service broke federal or state law.

A 10-person jury ruled against Matthew Ponzo on Tuesday, unpersuaded by his claims that NYC Messenger, its owner and a pair of managers violated the Americans with Disabilities Act and the New York State Human Rights Law by mistreating him during a panic attack and refusing to accommodate his anxiety and depression.

The verdict came after a six-day trial.

Ponzo, 36, initially filed his suit against NYC Messenger, owner Maylynn Deleo and managers Aaron Wade and Chris Boyofashola in December 2020. Ponzo said he worked as a messenger for the company, which says on its website that it's the main courier to all CVS stores in Manhattan, from May to October 2019, according to Laurence Lebowitz, who represents NYC Messenger.

Ponzo said that after he disclosed to his managers that he suffered from anxiety and depression, they began mocking his therapy sessions and refused to allow him to leave work early to attend them.

In October 2019, Ponzo said he suffered a panic attack at work while he was on the phone with his bank regarding a bounced paycheck. He said Wade and Boyofashola harassed him and backed him into a corner, which exacerbated the panic attack. He repeatedly asked for the reasonable accommodation of "being left alone" with no success, he said.

The next day, Ponzo saw that his work hours had been cut in half. He claimed this was an adverse action in retaliation to his panic attack because no other similarly situated employee had their hours reduced. Because of the financial hardship that this would cause and the discriminatory work environment he had experienced, Ponzo said he was forced to resign.

At trial, Lebowitz laid out additional details, telling the jury that Ponzo's hours were cut in half not because of his panic attack but because of a reduction in business. He added that Ponzo had secured a better-paying job within two weeks of NYC Messenger cutting his hours.

Lebowitz also maintained that NYC Messenger permitted Ponzo to attend his therapy sessions, and his therapy notes were entered into the record. The notes did not discuss this alleged abuse at work, Lebowitz said.

"We were able to show that other than his word there was no evidence he was subjected to discrimination," Lebowitz said.

Representatives for Ponzo did not immediately respond to a request for comment.

Ponzo is represented by Alexandria Jean-Pierre and Gregory Calliste Jr. of Phillips and Associates.

NYC Messenger is represented by Laurence J. Lebowitz, Milo Silberstein, Amanda Elizabeth Maguire

and Maria Louisa Bianco of Dealy Silberstein & Braverman LLP.

The case is Ponzo v. NYC Messenger Inc. et al., case number 1:20-cv-10709, in the U.S. District Court for the Southern District of New York.

--Editing by Nick Petruncio.

*Correction: A previous version of this article misidentified the firm that employs Lebowitz. The error has been corrected.*

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