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Herald defeats defamation suit by former Boston Water and Sewer official



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# Herald defeats defamation suit by former Boston Water and Sewer official

**Kris Olson** (<https://masslawyersweekly.com/author/kris-olson/>)  
2026 // 5 Minute Read  
In brief Superior Court judge dismissed all claims against the Boston Herald brought by former Boston Water and Sewer Commission HR chief. The judge found Massachusetts' fair report privilege protected... You can read the content in details following link <https://masslawyersweekly.com/2026/06/18/boston-herald-defamation-suit-dismissed-actual-malice/>

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- [Superior Court](https://masslawyersweekly.com/tag/superior-court/?taxo-tag-body) (<https://masslawyersweekly.com/tag/superior-court/?taxo-tag-body>) judge dismissed all claims against the [Boston Herald](https://masslawyersweekly.com/tag/boston-herald/?taxo-tag-body) (<https://masslawyersweekly.com/tag/boston-herald/?taxo-tag-body>) brought by former Boston Water and Sewer Commission HR chief.
- The judge found Massachusetts' [fair report privilege](https://masslawyersweekly.com/tag/fair-report-privilege/?taxo-tag-body) (<https://masslawyersweekly.com/tag/fair-report-privilege/?taxo-tag-body>) protected most of the Herald's reporting.
- The judge further ruled that the HR director qualified as a public figure due to her governmental responsibilities and compensation.
- The [defamation](https://masslawyersweekly.com/tag/defamation/?taxo-tag-body) (<https://masslawyersweekly.com/tag/defamation/?taxo-tag-body>) claim failed because the complaint did not allege actual malice or reckless disregard for the truth.

The Boston Water and Sewer Commission may have mistreated its former chief human resources officer because of her race, national origin and sex. But the Boston Herald is no longer at risk of having to pay a price for chronicling and editorializing on her travails inside and outside the office, now that a judge in the Superior Court's Business Litigation Session has dismissed all the claims that official had brought against the tabloid.

In all, the Herald published 20 articles about Marie-Armel Theodat, who is Black and Haitian-American. It also ran an editorial decrying the secrecy surrounding the salaries of quasi-public officials like Theodat, who saw her salary jump 60 percent over the span of about five years, according to the newspaper.

Many of the news stories discussed or mentioned civil lawsuits against Theodat, including one brought on behalf of her 88-year-old granduncle, who had dementia. The suit claimed that Theodat had participated in a scheme to swindle him out of his \$1.1 million Dorchester home.

A woman who also sued Theodat alleged Theodat never repaid her for a 2016 mortgage loan granted to Theodat for her Milton home.

To Theodat, the publication of those stories suggested that the Herald was conspiring with two of her office adversaries, former BWSC general counsel Michael F. Flaherty Jr. and former facilities and safety director Sean Canty.

The commission fired Canty in 2024, placed Theodat on paid administrative leave in December 2024, fired Flaherty in January 2025, and then — on orders of Boston Mayor Michelle Wu and her advisor, Theodat claimed — fired Theodat in April 2025.

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Wu and her advisor, Louis Mandarini, also convinced [Judge Kenneth W. Salinger](https://masslawyersweekly.com/tag/judge-kenneth-w-salinger/?taxo-tag-body) (<https://masslawyersweekly.com/tag/judge-kenneth-w-salinger/?taxo-tag-body>) to dismiss the claims of intentional interference with advantageous relations and intentional infliction of emotional distress that Theodat had brought against them.

As for the Herald, the publication argued that the claims against it were barred by the “fair report privilege,” which Salinger noted “furthers important public policies,” including allowing the news media to serve “as the public’s eyes and ears” by reporting on official actions and statements.

Salinger painstakingly went through each article, hunting for “official actions and statements.” He concluded that most — but not all — of the stories warranted the protection of the fair report privilege.

But the distinction between the two different sets of articles had no practical effect because Salinger decided that the Herald was entitled to dismissal of the claims against it with respect to the non-privileged articles, too. That’s because Theodat’s amended complaint failed to allege facts suggesting that the Herald defendants had acted with “actual malice” by publishing things that they knew were false or that they acted with reckless disregard of whether the things they published were false.

In deciding that the “actual malice” standard should apply, Salinger rejected Theodat’s argument that she was “neither an elected nor appointed public official.” Theodat’s “substantial responsibility or control over the conduct of governmental affairs” — not to mention her hefty salary — made her a public figure, Salinger concluded.

In support of her defamation claim, Theodat had used “actual-malice buzzwords,” writing in her complaint that the Herald had published false statements “knowingly, intentionally, with subjective awareness and/or with reckless and utter disregard for their falsity,” Salinger noted. But she had not backed up that assertion with well-pleaded facts.

Theodat also took the phrase “actual malice” too literally, Salinger suggested.

“Finally, though Theodat also alleges that the Herald Parties treated her unfairly and alleges that they acted ‘with ill-will’ toward her, that does not plausibly suggest that they acted with the ‘actual malice’ required for a public official or public figure to assert a defamation claim,” Salinger wrote.

The lack of “actual malice” also helped sink Theodat’s other tort claims against the Herald, for intentional infliction of emotional distress, intentional interference with advantageous relations, and invasion of privacy.

The intentional infliction of emotional distress claim also failed because Theodat had not made any factual allegations plausibly suggesting that the Herald engaged in misconduct that was “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community,” the standard found in §46 of the Restatement (Second) of Torts, Salinger said.

Joseph D. Lipchitz says he and his Saul Ewing colleague Bridgitte Mott included with their brief in support of their motion to dismiss charts that went paragraph by paragraph through the Herald’s articles, laying out the content of those paragraphs alongside the judicial filings and governmental action demonstrating that the Herald’s reporting was fair and accurate.

“We made it really easy for the court,” he says.

They tried to stress that Massachusetts law disfavors defamation claims because of their chilling effect on the press and the free expression rights of individuals, Lipchitz adds. But instead of pointing to precise statements in the articles that she contended were false and defamatory, Theodat had pleaded a “gestalt” type of claim that the articles collectively insinuated that she was not a good employee.

“That’s not what the articles actually say,” Lipchitz says.

Salinger's decision is a win not just for his client but for the role of the press in holding those in power accountable, according to Lipchitz.

"We see this as a validation of the Herald's focused and accurate reporting on a matter of grave public concern, which included public lawsuits against a public employee, and the official actions by a government agency as to that employee," he says. "The court maintained the legal protections afforded the press to report fairly and accurately on those issues."

The plaintiff's attorney, Lana Wolfson Sullivan of Needham, says she doesn't think Salinger's decision broke any new ground with respect to the media law issues at play.

She says she and her client have a difference of opinion with the judge as to whether Theodat is a public official for the purposes of the fair report privilege.

"It's a question of fact that should not be determined at this stage of the case," she says.

Sullivan adds that she's glad Salinger rejected the Herald's argument that what she characterizes as a "family matter" — the lawsuit involving Theodat's granduncle — transformed into an "official act" merely because a motion for a special process server had been filed in the case.

Even without the Herald, 11 of the 17 defendants sued by Theodat remain in the case, and most of her employment claims remain intact, Sullivan further notes.

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