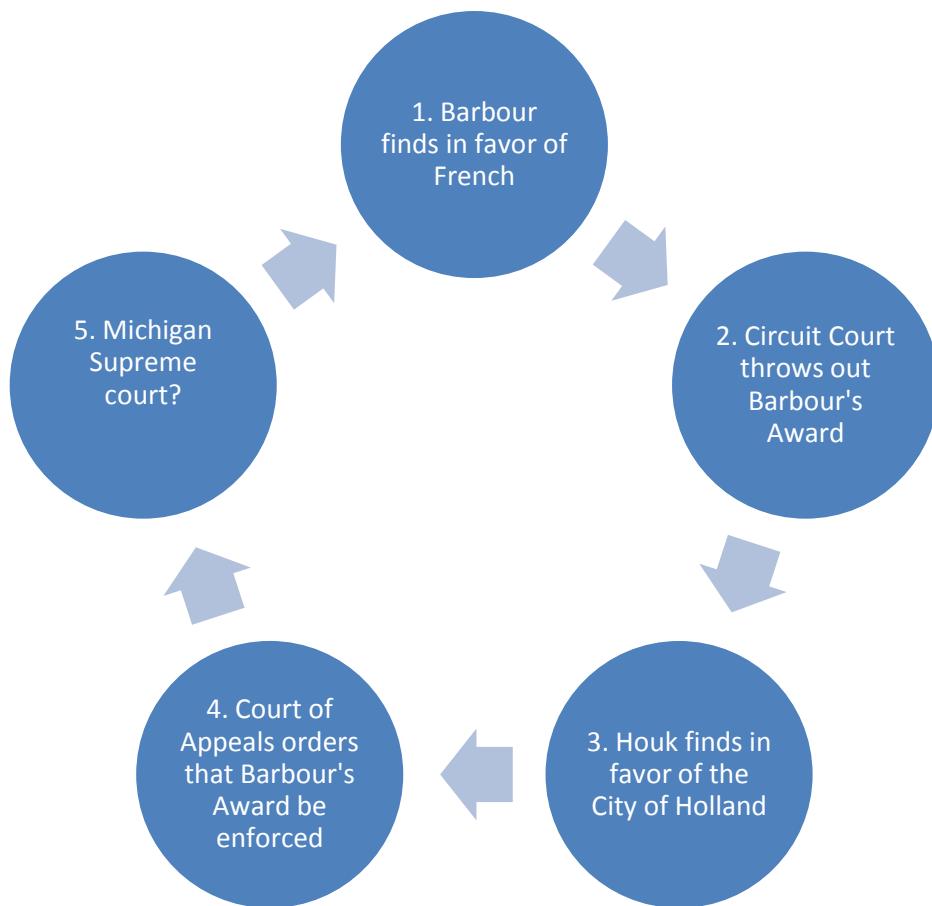


# French vs. City of Holland

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## Intro:

French vs. City of Holland is a tale of two arbitrators. Arbitrator David Barbour originally decided that the city did not have just cause to discharge Ms. French. However, Ottawa County Circuit Judge Ed Post threw out David Barbour's decision and stated that the arbitrator had abused his authority. Judge Post sent the case back to be re-arbitrated by arbitrator Peter Houk. Houk decided that the City of Holland did have just cause to terminate Ms. French. Ms. French then appealed the matter to the Court of Appeals. The appellate court decided that the Circuit Court (Judge Post) should have upheld the original arbitration decision by arbitrator Barbour. The city has appealed the case to the Michigan Supreme Court.



## **Background:**

Jennifer French was a just cause employee of the City of Holland. Ms. French began her employment on April 11, 1989, and was promoted several times including her promotion to City Clerk on July 20, 2000. On June 14, 2006, Ms. French was terminated by the City of Holland for dishonesty and for intentionally falsifying city documents. The City of Holland claims that Ms. French tried to receive a substantial financial benefit by applying for a Homestead Property Tax status on property which the city believes to not be her primary residence.

### City's Claims:

- Ms. French submitted a voter registration application to the City of Holland incorrectly stating that she lives in the City of Holland
- Ms. French submitted a Homestead Property Tax application to the State of Michigan incorrectly stating that her residence in Holland was her primary residence in order to obtain a tax advantage.
- As City Clerk, Ms. French has a responsibility to make sure that all voter registration is done responsibly and in conformance with the law.
- Because of her title and responsibility, Ms. French has brought a negative image to the City of Holland. The city Claims that Ms. French's actions has violated the trust of the citizens of Holland, and has diminished the City's credibility.

### Ms. French Claims:

- Ms. French claims she submitted her voter registration application correctly because she was at that time living at her primary residence in the City of Holland.
- Ms. French claims she submitted a Homestead Property Tax application to the state of Michigan correctly, and that the Holland residence was indeed her primary residence when she filed the application.
- Ms. French claims that because she filed both her voter registration application and Homestead Property Tax application correctly. Because of this, Ms. French has done nothing wrong and has done nothing to violate the trust of the citizens of the City of Holland and has done nothing to damage the reputation of the City of Holland.

Because Ms. French is just cause employee, the City of Holland has the burden of proof. They must prove to an arbitrator that Ms. French intentionally tried to defraud the State of Michigan by filing her voter registration application and/or her Homestead Property Tax application incorrectly in an attempt to receive a financial benefit. The case was first arbitrated by David Barbour.

## **Barbour's Award**

Arbitrator Barbour did not find enough evidence that Ms. French was dishonest when applying for a primary residence exemption for her residence in the City of Holland. Because there is no evidence that Ms. French was dishonest, or that she intended to defraud the City of Holland, the Arbitrator found that the element of trust has not been destroyed and it was not unreasonable to continue the employment relationship. If the element of dishonest intent is lacking because of failure of proof, no actionable offense has been committed.

**FINDING: Employee is to be reinstated to her position with back pay.**

Click to view Barbour's award: [Barbour's Award](#)

## **Circuit Court Dismisses Original Award**

Circuit Court Judge Ed Post decided that Arbitrator Barbour overstepped his authority in his decision. Just Post ordered that the original arbitration award be thrown out and that the case be sent back to arbitration. (Arbitrator Houk was appointed as the arbitrator for the second arbitration.)

**FINDING: Overturned the arbitrator's decision and sent the case back for a hearing by a second arbitrator.**

## **Houk's Award**

Arbitrator Houk found that there was enough evidence to support the City of Holland's claims that Ms. French intentionally applied for a primary residence exclusion on a home that was not her primary residence and did not qualify for the residence exclusion. The arbitrator found that Ms. French attempted to defraud the City of Holland, thus breaking the element of trust that is required between a city and a city official. Arbitrator Houk found that the penalty of termination was appropriate.

**FINDING: Dismissal upheld.**

Click to review Houk's award: [Houk's Award](#)

## Court of Appeals

After the termination was upheld by the second arbitrator, Ms. French appealed the decision to the Michigan Court of Appeals. The COA decided that Circuit Court Judge Ed Post did not have the authority to dismiss the original arbitration decision and that the original arbitration award should be upheld.

**FINDING: The COA ordered that Ms. French be returned to her position as City Clerk with back pay.**

Click to view Court of Appeals decision: [COA Decision](#)

## Michigan Supreme Court?

Michigan's Supreme Court is still deciding on whether or not to hear the City of Holland's appeal. If it rejects to hear the case, the original arbitration by Arbitrator Barbour will be upheld and Ms. French will return to her position as City Clerk with full back pay from the date she was dismissed.

## Michigan Passes Revised Uniform Arbitration Act (RUAA)

As of July 1, 2013, Michigan's new arbitration act is in effect. This is important because the RUAA protects arbitration decisions and makes it extremely difficult for a court to overturn an arbitrator's decision.

More on Michigan's Revised Uniform Arbitration Act

<http://www.fosterswift.com/publications-Michigan-Overhauls-Arbitration-Rules-RUAA.html>