

EXPENSIVE SUIT

Supreme Court ruling paves the way for same-sex sexual harassment case that nets big bucks for department store employee by Gip Plaster

A jury in El Paso, Texas, has awarded \$7.3 million to a Dillard's department store employee who claimed his male supervisor sexually harassed him.

"I'm pleased that the jury saw through the facade that Dillard's department stores tried to put forth in this case," says Steve Spurgin, lawyer for plaintiff David Gonzales.

In a unanimous decision, the six men and six women of the jury voted to award \$5 million in punitive damages and \$2.3 million in actual damages.

The jury's vote occurred in late May, but Spurgin says settlement negotiations are ongoing. If they fail, an appeal by Dillard's is expected; if a settlement is reached, the amount awarded to Gonzales will likely be lower.

According to the plaintiff's account of events, Gonzales, a married shoe salesman, was lifted from behind by his larger-framed supervisor, who simulated a sex act and groped him.

Gonzales reported the incident—and prior incidents—to superiors, but he was never informed whether any action had been taken. He did not know the supervisor was threatened with termination the same day because of the incident.

"He was reprimanded, but they never told Gonzales that he was reprimanded," Spurgin explains. "The real kicker is that they did not conduct any kind of investigation."

The harassment stopped after the reprimand.

According to Spurgin, the supervisor has denied the incidents occurred, and Dillard's lawyers argued that Gonzales made up the stories because his sales were down and he feared termination.

Dillard's did not return calls for comment.

The supervisor has now been promoted to an assistant manager position at another store, says Spurgin, who adds he was shocked to learn that Dillard's does not provide any sexual harassment or sensitivity training to its employees.

The chain, based in Little Rock, Ark., oper-

The U.S. Supreme Court ruled in March 1998 that same-sex sexual harassment cases are actionable under federal law. The court extended the prohibition against sexual discrimination in Title VII of the Civil Rights Act of 1964.



ates about 270 stores under the Dillard's name and 70 others acquired in its 1998 purchase of Mercantile Stores.

According to testimony in the case, the supervisor is married but may also be gay or bisexual. A gay man testified in the court proceedings that he has witnessed other inappropriate actions by the supervisor.

Spurgin says whether the supervisor is gay was not important to the case.

"The sexual orientation of the harasser was something we tried to stay away from in the trial," he says.

The gender of the victim was an issue for Spurgin, however.

"I suspect had this been a male supervisor harassing a female employee, perhaps bells would have gone off in the corporate offices in Little Rock," he says.

Until last year, a case like Gonzales' would not have been possible.

The U.S. Supreme Court ruled in March 1998 that same-sex sexual harassment cases are actionable under federal law. In *Oncale vs. Sundowner Offshore Services*, the court extended the prohibition against sexual discrimination in Title VII of the Civil Rights Act of 1964 to same-sex sexual harassment.

The case concerned Joseph Oncale, an offshore oil rig worker who said his supervisor threatened to rape him and penetrated him with a bar of soap while he was showering. A settlement was reached in the case, but the terms are confidential.

While the *Oncale* precedent has proved useful in cases involving same-sex harassment, a Long Island federal judge ruled on May 25 that a postal worker who claimed he was harassed because he is gay is not covered under the decision and cannot go forward with a federal employment discrimination claim.

Judge Leonard Wexler is the third district judge to rule that, although *Oncale* extended Title VII to apply to same-sex sexual harassment, it does not protect those who become the subject of harassment because they are gay or lesbian.

Among the revelations, the institute's former controller, Angel Corcino, testified that the former head of San Juan's health department, Pedro Rossello, demanded and received \$250,000 for his 1992 campaign for governor.

Rossello, now governor, denies any knowledge of the source of the money and has not been charged.

Also currently serving as chairman of Vice President Al Gore's campaign efforts in Puerto Rico, Rossello has been promoting himself as a possible secretary of health and human services in a Gore administration.

"What they did was unconscionable," says Daniel Zingale, executive director of the AIDS Action Council. "We condemn misuse of AIDS funds in the harshest possible terms."

AIDS advocates are concerned with the possible impact of the scandal on a pending audit by the General Accounting Office of nearly \$9 billion worth of Ryan White AIDS programs.

U.S. Rep. Tom Coburn, a Republican from Oklahoma, requested the audit in April. The report should be completed by year's end.

AIDS advocates say they support the concept of accountability in federal expenditures, but many are troubled by the fact that the effort is being led by Coburn, who is considered extremely conservative.

Activists concede, however, that the GAO has a reputation of strict nonpartisanship.

The review is strongly supported by San Francisco activist Michael Petrelis with the Accountability Project, and Wayne Turner of ACT UP Washington, D.C.

The duo hope the study will point to ways that money can be redirected from overhead expenses, such as high salaries, to direct services.

■ Reported by BOB ROEHR

AIDS FUNDING SCAMMERS CONVICTED IN PUERTO RICO

Millions of dollars of AIDS funds have been stolen in Puerto Rico, and activists say the full tally of services not delivered, drugs not taken and lives lost will never be known.

Late on June 14, a federal jury in San Juan convicted three people of stealing a large portion of an estimated \$2.2 million in missing federal AIDS funds for island residents. The trio will be sentenced in September and could spend 15 to 20 years in prison.

Justice Secretary Jose Fuentes Agostini is urging the maximum penalty.

The threesome were senior administrators in the now-defunct San Juan AIDS Institute. Six others have already pleaded guilty, and at least two other trials are scheduled for later this year.

The scam involved the funneling of money into dummy corporations from 1989 to 1994. Rather than serve people living with AIDS, the cash was used to line the pockets of the administrators and local politicians.

"This isn't just about fraud—it's murder," says Anselmo Fonseca, co-founder of AIDS Patients for Sane Policies, an activist group formed to monitor the trial and assure future accountability in AIDS funding.

"The jury made a very wise decision, but we believe this is only the tip of the iceberg," adds Jose Fernandez Colon, another member of the group.

Puerto Ricans have been enthralled by the stories of fraud exposed during the trial, which lasted nearly two months.



The scam involved the funneling of money into dummy corporations from 1989 to 1994.

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