

FROM THE COURTS

Discrimination Claim Based on Gender Stereotypes Is Revived

by Mark Hamblett

A federal appeals panel recognized that a man who claimed he was subjected to workplace discrimination because he didn't conform to gender stereotypes can sue under Title VII of the Civil Rights Act of 1964.

The U.S. Court of Appeals for the Second Circuit reinstated the dismissed Title VII claim of Matthew Christiansen, an openly gay man who said he was subjected to ridicule and abuse by a supervisor in his job as a creative director at DDB Worldwide Communications Group.

The court held that Christiansen adequately pleaded that he had been discriminated against "because of ... sex" within the meaning of Title VII.

However, Judges Robert Katzmann, Debra Ann Livingston and Eastern District Judge Margo Brodie declined the invitation to break new ground and hold Christiansen had stated a claim for workplace discrimination based on his sexual orientation, saying they lacked the authority to overrule case law established in 2000 in *Simonton v. Runyon* and in 2005 in *Dawson v. Bumble & Bumble*.

But Katzmann penned a concurrence, joined in by Brodie, saying that the time had come to recognize that discrimination based on sexual orientation can be actionable under Title VII.

Southern District Judge Katherine Polk Failla had dismissed Christiansen's suit after finding those cases required holding that sexual orientation discrimination does not come under Title VII's definition of discrimination "because of ... sex."

Failla noted there were several allegations that Christiansen's supervisor, Joe Cianciotto, was ridiculing him for effeminacy in comments and drawings. But she found Christiansen's complaint centered on discrimination for being gay, not because he failed to conform to a masculine stereotype.

Because Cianciotto also made remarks connecting effeminacy, sexual orientation and HIV status, Christiansen, who is HIV-positive, also brought a claim under the Americans with Disabilities Act, but that was dismissed as well.

The closely watched appeal in *Christiansen v. Omnicom Group* saw spirited oral arguments in January.

Christiansen's appeal included support from the U.S. Equal Employment Opportunity Commission, which in 2015 changed its opinion and began arguing it was time to recognize sexual orientation discrimination under Title VII.

The EEOC's view is among those currently being weighed by the U.S. Court of Appeals for the Seventh Circuit, which sat en banc in November after vacating a panel's refusal to recognize sexual orientation in *Hively v. Ivy Tech Community College* in 2016.

Included among the amici in Christiansen were 128 members of Congress who urged the Second Circuit to reverse course.

The circuit, by per curiam opinion, reinstated the claim based on



A federal appeals court reinstated the case of Matthew Christiansen, an openly gay man who said he was subjected to ridicule and abuse by a supervisor. Susan Chana Lask, right, is his lawyer.

gender stereotyping under the U.S. Supreme Court's 1989 decision in *Price Waterhouse v. Hopkins*, where a female senior manager described as "macho" and "masculine" was told to act, talk, walk and dress more femininely if she wanted to improve her chances for advancement.

Christiansen, the circuit said, alleged Cianciotto described him as "effeminate" to others in the office, "and depicted him in tights and a low-cut shirt 'prancing around'" and "alleges that the 'Muscle Beach Party' party poster, depicting Christiansen's head attached to a bikini-clad female body lying on the ground with her legs in the air, was seen by at least one co-worker as portraying Christiansen 'as a submissive sissy.'"

This was enough to state a claim, the court said, as *Simonton* and *Dawson* "merely hold that being gay, lesbian or bisexual, standing alone, does not constitute nonconformity with a gender stereotype that can give rise to a cognizable gender stereotyping claim."

Katzmann's concurrence outlined how sexual orientation discrimination logically comes within the rubric of Title VII.

"When the appropriate occasion presents itself, it would make sense for the court to revisit the central legal issue confronted in *Simonton* and *Dawson*, especially in light of the changing legal landscape that has taken shape in the nearly two decades since *Simonton* [was] issued," he said.

"First, sexual orientation discrimination is sex discrimination for the simple reason that such discrimination treats otherwise similarly situated people differently solely because of their sex," he said, and he would adopt an "associational theory" of sex discrimination.

"I conclude that if gay, lesbian or bisexual plaintiffs can show that they would not have been discriminated against but for the sex of their associates, they have made out a cognizable sex discrimination claim," he said.

Contact Mark Hamblett at mhamblett@alm.com. On Twitter: [@Mark_Hamblett](https://twitter.com/Mark_Hamblett).



NOTICE OF PUBLIC HEARING CITY OF DORAL

All residents, property owners and other interested parties are hereby notified of a **Council Hearing on Wednesday, April 12, 2017**, beginning at 6:00 PM to consider the resolution below for the Sanctuary at Doral project. This meeting will be held at the City of Doral, Government Center, Council Chambers located at 8401 NW 53rd Terrace, Doral, FL. 33166.

The City of Doral proposes to adopt the following Resolution:

RESOLUTION No. 17-

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING/DENYING A MODIFICATION TO THE APPROVED SANCTUARY AT DORAL SITE PLAN, DATED NOVEMBER 2, 2016, CONSISTENT WITH THE SETTLEMENT AGREEMENT ENTERED INTO MARCH 13, 2017 BY AND BETWEEN THE CITY OF DORAL AND SANCTUARY AT DORAL LLC., FOR A 7.3 ACRES PARCEL LOCATED ON THE SOUTH SIDE OF NW 41 STREET AND BETWEEN (THEORETICAL) NW 94 AVENUE AND (THEORETICAL) NW 95 AVENUE IN THE CITY OF DORAL; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

HEARING NO.: 17-03-DOR-01

APPLICANT: Sanctuary at Doral, LLC. (The Owner)

PROJECT NAME: Doral Sanctuary

FOLIO NO.: 35-3028-007-0030

LOCATION: The subject property is located south of N.W. 41 Street and between (theoretical) N.W. 94th Avenue and (theoretical) N.W. 95th Avenue in the City of Doral, Florida.

SIZE OF PROPERTY: 7.3 ± Acres

REQUEST: Sanctuary at Doral, LLC. (The Owner) is requesting a modification to the approved Sanctuary at Doral Site Plan dated November 2, 2016, consistent with the settlement agreement entered into March 13, 2017 by and between: The City of Doral and Sanctuary at Doral LLC.

LEGAL DESCRIPTION: Tract F of eastern Doral acres section one subdivision, according to the plat thereof, recorded in PB 111-53, of the public records of Miami-Dade County, Florida.

Location map



Information relating to this request is on file and may be examined in the City of Doral, Planning and Zoning Department located at 8401 NW 53rd Terrace, Doral, FL. 33166. All persons are invited to appear at this meeting or be represented by an agent, or to express their views in writing addressed to the City Clerk, 8401 NW 53rd Terrace, Doral, FL. 33166. Maps and other data pertaining to these applications are available for public inspection during normal business hours in City Hall. Any persons wishing to speak at a public hearing should register with the City Clerk prior to that item being heard. Inquiries regarding the item may be directed to the Planning and Zoning Department at 305-59-DORAL.

Pursuant to Section 286.0105, Florida Statutes if a person decides to appeal any decisions made by the City Council with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law. In accordance with the Americans with Disabilities Act, all persons who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the Planning and Zoning Department at 305-59-DORAL no later than three (3) business days prior to the proceeding.

NOTE: If you are not able to communicate, or are not comfortable expressing yourself, in the English language, it is your responsibility to bring with you an English-speaking interpreter when conducting business at the City of Doral during the zoning application process up to, and including, appearance at a hearing. This person may be a friend, relative or someone else. A minor cannot serve as a valid interpreter. The City of Doral DOES NOT provide translation services during the zoning application process or during any quasi-judicial proceeding.

NOTA: Si usted no está en capacidad de comunicarse, o no se siente cómodo al expresarse en inglés, es de su responsabilidad traer un intérprete del idioma inglés cuando trate asuntos públicos o de negocios con la Ciudad de Doral durante el proceso de solicitudes de zonificación, incluyendo su comparecencia a una audiencia. Esta persona puede ser un amigo, familiar o alguien que le haga la traducción durante su comparecencia a la audiencia. Un menor de edad no puede ser intérprete. La Ciudad de Doral NO suministra servicio de traducción durante ningún procedimiento o durante el proceso de solicitudes de zonificación.

Connie Diaz, CMC
City Clerk
City of Doral
3/29

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