

New York Cases Focus on Rights of Religious Employers

By Stephen H. King

TWO RECENT CASES in New York involving The Salvation Army have focused attention on religious organizations' freedom to use religious criteria in employment decisions. Although a federal district court upheld The Salvation Army's right to implement a policy requiring employees to subscribe to a mission statement highlighting the Christian character of the organization, a subsequent state court decision concluded that the "religious organization" exception in New York's anti-discrimination laws does not bar a state law claim of religious harassment.

In the federal case, *Lown v. Salvation Army*, 393 F.Supp. 2d 223 (S.D.N.Y. 2005), employees of The Salvation Army challenged its 2003 reorganization plan, which emphasized the importance of employing individuals whose religious affiliations and conduct are consistent with the Army's religious principles. The plaintiffs alleged that The Salvation Army did not previously carefully monitor employees to ensure agreement with its religious tenets.

A new policy manual clearly identified the organization as a Christian church and required employees to subscribe to a mission statement highlighting the Christian character of the organization. Employees challenged the policy as creating a hostile working environment that eventually led to their constructive termination.

The court dismissed the employees' federal religious discrimination claims, concluding that, under §702(a) of the Civil Rights Act of 1964, 42 U.S.C. §2000e-1(a), The Salvation Army has the right to discriminate on the basis of religion in its employment decisions. The court also dismissed claims of retaliatory employment practices under Title VII, again citing The Salvation Army's right to make employment decisions on the basis of religion under §702(a). However, the court allowed the plaintiffs to proceed with a similar religious retaliation claim under New York state employment laws, which provide narrower exceptions for religious employers.

In *Logan v. Salvation Army*, 2005 WL 3076308 (N.Y. Sup. Ct., N.Y. Co., Nov. 16, 2005), a trial court recently denied a pretrial motion to dismiss another discrimination claim. Plaintiff Zachary Logan alleged that he was harassed because

of his religion and sexual orientation, and was subsequently fired when he lodged a complaint.

As a World Trade Center Disaster Relief project case-worker, Logan asserted that he was subjected to verbal harassment and disparaging treatment from his supervisor because he was gay and Jewish. He also claimed that when he went to the HR department to report the alleged harassment, he was not allowed to present his complaints, but was instead reprimanded and subsequently terminated.

Logan sued The Salvation Army under a state human rights law prohibiting discrimination based on sexual orientation and religion, among other categories. The state court found that the religious exceptions to the state anti-discrimination statute do not permit the alleged misconduct.

The court noted that while the exceptions would allow The Salvation Army to promote religious principles and give preference in employment to religious persons, it has no right to "harass their employees and treat the employees in an odiously discriminatory manner." It determined that if Logan's assertions were true, the alleged behavior by the supervisor would fall beyond the permissible exceptions provided by the human rights law. Thus, the case survived the motion to dismiss and may proceed to pretrial discovery.

Logan and *Lown* are examples of the type of discrimination case that may become more common. Like the *Lown* court, federal and state courts have generally respected the statutory (and, many would argue, constitutionally required) right of religious employers to use religious criteria in typical hiring, promotion and termination decisions. However, the judicial treatment of claims alleging retaliation or harassment is less consistent.

To minimize the risk of claims of discrimination, and adverse judicial decisions, religious organizations should ensure that their policies regarding the use of religious criteria in employment decisions are soundly established, clearly defined, and consistently implemented, and the employees—whatever their religion—are treated with courtesy and respect.

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