



One Dollar for Religious Discrimination; Thousands Awarded for Attorney's Fees and Costs

By: Kevin R. McManaman

The Eighth Circuit Court of Appeals recently affirmed the District Court of Nebraska's jury verdict which awarded only one dollar for suffering religious discrimination and retaliation, but granted attorney fees and costs. *Ollis v. HearthStone Homes, Inc.* (No. 06-2852). More notable, perhaps, were the series of employer errors which made matters worse at every stage.

The plaintiff was a Christian employed by a home builder, HearthStone, a company that used "mind body energy (MBE) sessions to cleanse the negative energy from its employees in order to enhance their work performance." HearthStone's "core values" included spiritual elements involving reincarnation, and called for leaving behind "all experiences from past lives" and a belief that uncorrected problems from past lives must be corrected in the present life. Employees were required to schedule appointments for "sessions" with company employed "coaches" to remove negative energy, including one coach who openly claimed to speak with animals. A record of attendance was kept for these sessions. MBE practice at HearthStone included one circumstance in which the plaintiff's supervisor was required to go to MBE sessions because the supervisor's ancestors were believed to having perished on a particular subdivision development during the "Ice Age," which caused present drainage problems at the subdivision. Additionally, decisions at the company were at times made using "muscle testing." The muscle testing process required the individual being tested to stand with arms extended while a second individual pushed down on the extended arms as "yes" or "no" questions were asked. If the person's arms are difficult to push down, the answer was "yes."

The plaintiff felt that the MBE sessions were incompatible with his Christian beliefs, and he expressed his disagreement with his supervisor, who unwisely kept the matter confidential and helped plaintiff feign agreement with the MBE practices. Later at a company sales meeting plaintiff conveyed that it was against his religious beliefs to participate. Subsequently, a female employee was hired under the plaintiff's supervision, but shortly requested reassignment because of plaintiff's sexual comments. Thereafter, informed by "muscle testing," the company terminated plaintiff for poor judgment, but without reference to his sexual harassment of the subordinate. (Eventually the subordinate was also later terminated due to reportedly having "removed her clothing at a golf outing and was doing cart-wheels naked on a golf course.")

Plaintiff claimed religious discrimination, and also retaliation for having been terminated after complaining about the religious requirements of the job. A jury returned a verdict in his favor, because his sincere and deeply held religious beliefs conflicted with a requirement of the job, he told HearthStone about the conflict, and he suffered an adverse employment action because of it. The jury awarded nominal compensation for his damages in the amount of \$1.00. The district court then approved Mr. Ollis's request for attorney's fees, reducing the hourly rate by 25 percent due to the failure to prove a larger compensatory damage.

This case provides several important reminders to employers. First, even without significant damages attorney's fees can be awarded, and attorney's fees after trial are usually a substantial sum. Second, supervisory mistakes (or lack of proper training) can compound the original issues. In this case, Plaintiff's supervisor kept plaintiff's religious discrimination complaint confidential, rather than taking action. Company policy should have been contrary, and the supervisor should have been trained to never bury discrimination complaints. Third, termination was handled poorly. At termination, the employer failed to give the sexual harassment facts as a basis of termination, resulting in the loss of the defense that the termination was done for a legitimate non-discriminatory reason.