

News Story

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Banker gets \$1M verdict for national origin bias

Employment case nets \$600K in punitives

By Barbara Rabinovitz

An Iranian-born bank manager who claimed he was fired from his job because of discrimination based on his national origin has been awarded \$1 million by a Norfolk Superior Court jury — more than half of it in punitive damages.

In *Khakian v. Fleet National Bank*, the defendant bank claimed that the plaintiff was fired for performing an unauthorized transaction for a customer.

But the plaintiff's attorneys, David G. Hanrahan and Richard D. Vetstein, both of Boston, said they were able to prove their client's bias claim by focusing on the supervising district manager's conduct, which included, at one time, a "kill all the foreigners" comment, and the plaintiff's own solid employment record.

After a six-day trial, at which Superior Court Judge Barbara A. Dortch-Okara presided, the jury deliberated for six hours before returning the verdict for the plaintiff, awarding \$150,000 in back pay, \$250,000 in emotional distress and \$600,000 in punitive damages — the latter being "one of the larger punitive awards," according to one of the lawyers in the case.

While acknowledging that the temper of the times may have played some role in the jury's award, Hanrahan said the rare, large punitive damage award in this employment setting "is a signal that jurors will not tolerate the type of conduct exhibited by the bank" toward his client.

He also said his client's outcome sends "a message to lawyers who do employment law that they should be thinking about the prospect of punitive damages when they're advising their clients whether to settle or not ... that they had better look long and hard at the company's action before the termination, at the time of the termination and the company's conduct after the termination."

The final judgment reached \$1,329,995 after interest and attorneys' fees. (See Verdict Report.)

The bank's attorney, Siobhan M. Sweeney of Boston, was unavailable for comment prior to deadline.

'The bank has changed'

The plaintiff, Shervin Khakian, was a Tehran native and a U.S. resident since 1977, who later became a naturalized citizen.

He began his career in banking in March 1985, as a teller at then-BayBank's Dedham branch. He stayed with the company after it was acquired by Bank of Boston and then by Fleet (since acquired by Bank of America) and worked his way up to the position of branch manager. Over the years, he accumulated several awards for his performance.

In August 2002, as a branch manager in Watertown, Khakian came under the supervision of a new district manager, who, during one of his first meetings with his branch managers, happened to mention a war game he had played with his son.

The district manager, Khakian recalled in his October 2004 affidavit, "said that when he played G.I. Joe with his son, he would say, 'I am the American, and I am going to kill all the foreigners.'"

The plaintiff's affidavit adds: "When this offensive comment is put into the context today where our country is at war against many of those from the Middle East and where the President has labeled my birthplace of Iran an 'axis of evil,' I feel that this offensive statement reflected [the district manager's] bias and prejudice against me as a 'foreigner' from the Middle East."

Khakian also claimed that his manager was demeaning and condescending toward him. "He did not treat the American born managers in such manner," the plaintiff recalled in his court filing.

In November 2002, the district manager asked for Khakian's resignation, saying only that "the bank has changed." When Khakian refused to resign, his manager followed up with a Warning and Performance Improvement Plan but, according to Khakian, provided no coaching, made little contact with him and failed to justify the so-called PIP in the first place.

On Jan. 10, 2003, the manager fired Khakian, giving as his reason a \$600 credit Khakian had approved for a customer whose deposit had been lost.

Credit the credit

Hanrahan told Lawyers Weekly that the credit proved to be "crucial to the jury's decision" in his client's favor.

As Hanrahan explained it, the district manager told Khakian that he had exceeded the bank's \$500 credit limit in giving the customer \$600 for a lost deposit in that amount.

"But the evidence was very clear that, early in the district manager's tenure, he had told the branch managers they had his authorization to give credits up to \$1,000," Hanrahan said, adding that "he told them, 'Don't bother me' with any requests to do so."

Bank policy on employees' treatment of customers also figured importantly in the Hanrahan-Vetstein trial strategy, both plaintiff's attorneys indicated.

The plaintiff recalled in his affidavit an instruction consistent with the bank's "customer service concept of 'making it right on the spot,' [the district manager] granted us authority to issue rebates up to \$1,000 without prior approval."

Hanrahan noted that the bank's position "was that [Khakian] should have made a provisional statement to the customer," instead of accepting the word of a teller that an investigation of the customer's claim about the missing \$600 deposit had been completed and that the depositor should be given the credit.

"The irony is the bank is telling their employees to 'make it right on the spot,' " Hanrahan said, recalling Khakian's prompt attention to the bank customer's concern.

Touting what he views as a further strength in his client's case, Hanrahan said the bank tried to prove that Khakian's performance was not all it was reputed to be "by blaming him for a poor audit result at the Stop & Shop branch. But he wasn't manager at the time."

Hanrahan said he was able to show the jury that, on all his employee evaluations, Khakian was given a 5, which was the top rating.

Behind the award

Hanrahan noted that, at 1.5 times the amount of compensatory damages, "this is one of the larger punitive awards even though it fits comfortably" within court parameters.

He explained that the U.S. Supreme Court has upheld up to six times compensatory damages.

Hanrahan, who more often serves as defense counsel in employment discrimination cases, said he filed this case in Norfolk County — despite its flinty reputation when it comes to verdict awards — because Khakian lived in Brookline at the time.

Hanrahan conceded he was "made aware" of Norfolk jurors' attitudes about monetary awards "several times," but, he said he "always felt that jurors, whatever the venue, can look at a case and treat it fairly."

The jury, Hanrahan said, was "a typical cross-section of a suburban county," weighing the case of "an American citizen who had worked hard and rose up the ladder — like everyone else in the county."

As for the current employment situation of his client, Hanrahan said he is the manager of a downtown Boston branch of Sovereign Bank.

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Verdict Report

Type of action: Employment

Injuries alleged: Back pay, front pay, emotional distress

Name of case: Khakian v. Fleet National Bank

Court/case #: Norfolk Superior Court, No. 03-01403

Tried before judge or jury: Jury

Name of judge: Barbara A. Dortch-Okara

Amount of verdict: \$1 million (\$1.329 million including interest and \$200,000 in attorneys' fees)

Date: April 14, 2006

Demand: Confidential between parties

Highest offer: Confidential between parties

Attorneys: David G. Hanrahan and Richard D. Vetstein, Gilman, McLaughlin & Hanrahan, Boston (for the plaintiff)

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