

MM&R Attorneys Schuver and Lorenz Obtain Eighth Circuit Decision Reviving Lawsuit On Behalf Of Client Who Was Denied A Job Because He Is Gay

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BELLEVILLE -Today, the U.S. Court of Appeals for the Eighth Circuit reversed a lower court decision and revived a lawsuit by MM&R client Mark Horton, a healthcare sales specialist whose job offer at St. Louis-based Midwest Geriatric Management (MGM) was withdrawn when the employer learned Horton is gay. The lawsuit was filed by Mark S. Schuver and Natalie T. Lorenz of Mathis, Marifian & Richter, Ltd. (“MM&R”), and the appeal was filed by MM&R and co-counsel, Lambda Legal.

Today’s ruling follows the U.S. Supreme Court’s decision three weeks ago in *Bostock v. Clayton County* that Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of sexual orientation. Mark Horton’s case was argued before the Eighth Circuit on April 17, 2019, the day before the Supreme Court held its conference in which it decided to grant review in the *Bostock* case. As a result, Mr. Horton’s appeal was immediately put on hold awaiting the decision by the Supreme Court.

In February 2016, Horton, then vice president for sales and marketing for Celtic Healthcare, was approached by an executive search firm hired by Midwest Geriatric Management (“MGM”), a Celtic Healthcare competitor, to fill a similar position at MGM. While Horton was not actively looking to leave Celtic at that time, MGM’s representative persuaded him that it would be worth his while, so Horton decided to apply. After an extensive assessment and interview process, in mid-April, 2016, Horton received a written job offer from MGM’s owners, Judah and Faigie (Faye) Bienstock. Horton accepted the offer on May 4, and received an enthusiastic reply email from Faye Bienstock welcoming Horton to MGM. Based upon both the written offer and the enthusiastic reply, Horton notified Celtic Healthcare that he would be leaving and taking a job with MGM.

In the course of finalizing his start date and tracking the last remaining academic records for MGM’s background check, Horton had several communications with Faye Bienstock, none of which indicated any issue with his employment. Then, on May 17, in an email updating Bienstock on the status of the academic records search, Horton revealed that he was in a same-sex relationship when he wrote: “My partner has been on me about since he completed his PhD a while back.” Shortly thereafter, Bienstock wrote Horton withdrawing the offer of employment.

MM&R Attorneys Mark Schuver and Natalie Lorenz filed a lawsuit in federal court on Horton’s behalf alleging that he had been unlawfully terminated by MGM due to his sexual orientation and other grounds. MGM filed a motion to dismiss, arguing that Title VII of the Civil Rights Act of 1964 does not protect individuals from discrimination based on sexual orientation. Relying on a prior Eighth Circuit decision from 1989

(Williamson v. A.G. Edwards and Sons, Inc.), the trial court agreed with MGM and dismissed Horton's case. MM&R and Lambda Legal then file an appeal on Mr. Horton's behalf.

On June 15, 2020, the U.S. Supreme Court issued a decision in another LGBTQ discrimination case brought under Title VII. In *Bostock v. Clayton County, Georgia*, 590 U.S. ___, 2020 WL 3146686 (U.S. June 15, 2020), the Supreme Court held that, "An employer who fires an individual merely for being gay or transgender defies the law." 2020 WL 3146686, at *18. More specifically, the Court held that "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex." Id. at *7. "Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids." Id. at *3. In so ruling, *Bostock* effectively overruled the case relied upon by MGM and the trial court, *Williamson v. A.G. Edwards and Sons, Inc.*

"This was always the law, and now that the Supreme Court has removed all doubt, the Eighth Circuit had little choice but reverse the dismissal of Mark's case. It is a great day for Mark and LGBTQ employees everywhere," MM&R Attorney Mark S. Schuver said. "Mark was not actively looking to leave Celtic Healthcare; MGM recruited him. And it was only after receiving the written offer and the enthusiastic emails that Mark notified Celtic he was leaving. And he was certainly not hiding his sexual orientation, nor should he have to. This has been devastating for Mark and his family, and hopefully he now will get the justice he deserves."

"When the Supreme Court settled at long last the issue of whether discrimination on the basis of sexual orientation or transgender status violates Title VII's prohibition on discrimination because of sex, it was only a matter of time before the Eighth Circuit would apply that new precedent to Mark's case," said Greg Nevins, Senior Counsel and Employment Project Director at Lambda Legal. "Mark was clearly qualified, and in fact it was all systems go until management at MGM learned that Mark is gay. As the Supreme Court made clear: when you harass or fire employees or reject applicants because they are LGBTQ, you violate federal law."

"The Eighth Circuit sees what happened to me as the same as what happened to Mr. Bostock and the other brave plaintiffs who took our battle all the way to the Supreme Court," Horton said. "Midwest Geriatric Management basically ended my career. I left my previous job to accept what appeared to be a great offer at MGM, a position that I had been recruited for. When MGM rescinded the offer, suddenly I was jobless. Being able to be open and bring my whole self to my work has been an asset, and I have the track record to prove it."

Mark S. Schuver and Natalie T. Lorenz are attorneys in the Belleville, Illinois, office of Mathis, Marifian & Richter, Ltd. Mr. Schuver and Ms. Lorenz represented Horton in the lawsuit filed in August of 2017, in the U.S District Court for the Eastern District of Missouri. After the lawsuit was dismissed by the trial court, Lambda Legal joined the case in its appeal to the Eighth Circuit. Gregory R. Nevins, Omar Gonzalez-Pagan and Sharon M. McGowan are the attorneys for Lambda Legal in this matter.

The case is Horton v. Midwest Geriatric Management. Read the ruling here:
https://www.lambdalegal.org/in-court/legal-docs/horton_mo_20200706_decision

Read about the case here: <https://www.lambdalegal.org/in-court/cases/horton-v-midwest-geriatric-management>

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