

Hollins University

Hollins Digital Commons

Ann B. Hopkins Papers

Manuscript Collections

7-1-1990

No. 84-3040 Plaintiff's Proposed Findings of Fact

United States District Court for the District of Columbia

Follow this and additional works at: <https://digitalcommons.hollins.edu/hopkins-papers>



Part of the **Civil Rights and Discrimination Commons**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANN B. HOPKINS)
)
 Plaintiff,)
)
 v.) Civil Action No. 84-3040
) (Gesell, J.)
 PRICE WATERHOUSE)
)
 Defendant.)

PLAINTIFF'S PROPOSED FINDINGS OF FACT

1. The Court reaffirms and incorporates by reference its September 20, 1985 findings of fact on liability, Hopkins v. Price Waterhouse, 618 F.Supp. 1109, 1111-1118 (D.D.C. 1985), and adopts the Supreme Court's formulation that sex-linked discriminatory evaluations of plaintiff as a 1983 candidate for admission to partnership constituted a "substantial factor" in defendant's decision to place her candidacy on hold. ^{1/} The Supreme Court's remand directs this Court to determine on the existing record whether defendant has proven by a preponderance of the evidence that it would have made the same "hold" decision even if it had not taken

^{1/} This finding was implicit in the Court's 1985 findings on liability. While the plurality opinion in the Supreme Court uses the phrase "motivating part" to describe the causal role that discriminatory evaluations of plaintiff played in the "hold" decision, Price Waterhouse v. Hopkins, ___ U.S. ___, 109 S.Ct. 1775, 1787, 1795, the concurring and dissenting opinions use the phrase "substantial factor." Id., 109 S.Ct. at 1795, 1803-1805, 1806. The five votes represented by these opinions suggest that the "substantial factor" wording will be favored henceforth in mixed-motive cases such as this one, although in the past the Supreme Court has treated the terms "substantial factor" and "motivating factor" as equivalents. Mt. Healthy School District Bd. of Ed. v. Doyle, 429 U.S. 274, 287 (1977).

these discriminatory evaluations and plaintiff's sex into account. Price Waterhouse v. Hopkins, 109 S.Ct. at 1793, 1975, 1806.

2. Defendant has acknowledged that concerns about plaintiff's "interpersonal skills" were the determinative reason for the firm's "hold" decision. See 618 F.Supp. at 1115.

3. The partner comments which criticized plaintiff's interpersonal skills include those that reflect sexual stereotyping as well as some that do not. See 618 F.Supp. at 1114 and 1117 and accompanying record references.

4. Because Price Waterhouse permitted and gave substantial weight to biased criticisms of plaintiff and other women candidates, and because it made no effort to investigate and discard, where appropriate, comments that suggested a double standard, 618 F.Supp. at 1119-1120, it is not possible on this record to determine the particular weight which the firm's Admissions Committee and Policy Board gave to such criticisms in plaintiff's case.

5. The problem is illustrated by the de bene esse deposition testimony of Joseph E. Connor, who in 1983 was Price Waterhouse's Managing Partner and the Chairman of its Policy Board. Mr. Connor had taken a personal interest in the firm's Office of Government Services where plaintiff worked. He knew her and knew of her work. J. Connor Dep. 22-27. He felt they had a good personal relationship and he enjoyed her company. Id. at 58. "As an individual, I thought she was fine." Id. at 94. Mr. Connor said he was "surprised and disappointed with the widespread nature and intensity of the individual negative comments on Ann. I thought she would have a different row to hoe on this one because she had done a

good job. I was not aware of these problems that others began to point out." Id. at 88. As a result, although he was a supporter of plaintiff's candidacy for partner, within the Policy Board, Mr. Connor voted for a "hold." Id. at 43. Mr. Connor evidently made no attempt to evaluate the negative comments in terms of sex bias or stereotyping. He reacted to them as a whole. Id. at 103-104.

6. Mr. Connor acknowledged that "those who had less than full time involvement with Ann, were the deciders on this one." Id. at 62. Seven of the eight "no" votes by individual partners on plaintiff's candidacy were by partners who had limited contact with her and therefore filled out short form evaluations. Def. Ex. 27; Tr. 245. See 618 F.Supp. at 1119. The numerical ratings as well as comments of these short form critics focused on plaintiff's personality and had little to say about her practice and management skills, in comparison with those partners who filled out long forms because they knew plaintiff better and had had more work contacts with her. The long form comments contained only one "no" vote, Def. Ex. 27.

7. The record makes it impossible for an outsider to parse the relative weight which the Admissions Committee and Policy Board members gave to negative comments about plaintiff that were tainted by stereotyped attitudes and those that were not, but the Court has no reason to believe that Mr. Connor's approach was not representative. It is also appropriate to accord special credence and weight to the advice given plaintiff by Thomas Beyer, the partner who "knew exactly where the problems were" with her candidacy and had the responsibility of telling her what they were.


Tr. 316 (Marcellin); see also Tr. 253-254 (Ziegler). Mr. Beyers' advice to plaintiff clearly reflected his understanding that greater femininity on her part would overcome the "hold" decision. Conversely, it was a perceived lack of femininity that had caused that decision. As was previously noted, he advised plaintiff to walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry. See 618 F.Supp. at 1117.

8. The Court also notes that in her testimony Dr. Susan Fiske identified comments by male partners on plaintiff's candidacy which were not overtly sexist in content but which she believed were influenced by sex stereotypes. See Tr. 560, 578-579, 583, 591. Although sex stereotyping is often a subtle and unconscious form of discrimination, 618 F. Supp. at 1117-1118, the Court finds it unnecessary to determine the validity of Dr. Fiske's opinions concerning individual comments which fall into this category, because the burden of proof lies with defendant at this stage. However, her testimony points up the difficulty defendant confronts in identifying those comments that should be disregarded and those that should not be in light of the Supreme Court mandate. The problem is one of defendant's own making since it never took any steps to discourage sexual bias or to attempt to investigate which comments were so infected and deny them weight.

9. Any attempt to reconstruct the partnership decision in plaintiff's case free of improper bias must end in uncertainty, and defendant bears the risk of that uncertainty, as the Supreme Court held. 109 S.Ct. at 1790, 1802. See also 618 F.Supp. at 1120.

10. Defendant has not proved by a preponderance of the evidence that, absent any consideration of plaintiff's gender or of those comments which were tainted by sexual stereotyping, it would have made the same decision to place her candidacy for admission to partnership on "hold."


James H. Heller #79350


Douglas B. Huron #89326
KATOR, SCOTT & HELLER
1275 K Street, N.W., #950
Washington, D. C. 20005
(202) 898-4800

Attorneys for Plaintiff