

Civil Rights Division - Bureau of Labor and Industries
Complaint Dismissal Memo

Complainant David Sims
 Respondent Besaw's Cafe
 Case Number PT-EM-SO-960723-1059 Date August 30, 1996

Investigator Ahmad Muhammad

2nd Signature ☒ Yes ☐ No

Date 9/3/96

Summary

Cp states a claim of unlawful discrimination in employment based on his sexual orientation Cp is gay

Cp was hired on May 22, 1996 as a part time cook. The person that hired him was Chef, Daniel McGinnis, he reviewed Cp's resume and realized he had instructed him at the culinary school Chef Daniel believed Cp was gay but that played no part in his hiring Cp, it would appear that he had those thoughts about Cp when he taught him at the culinary school

Cp was hired with the understanding that he was working under a 90 orientation period to determine if Cp was the right employee for them and they were the right employer for him

Two days into his employment he was asked to prepare a dish for the Chef and the Chef did not like the way he prepared the dish He states he tried to instruct Cp on the way he wanted the food prepared but Cp was reluctant to accept his critique.

The Chef noted Cp working on the line he did not appear to be focused, he felt Cp spent too much time away from the food service line, and he felt Cp had an unprofessional attitude

Cp denies that the Chef's opinion is accurate of him; that the Chef's attitude did not seem hostile until he told him he was bringing his fiancée "Thomas" from Europe so they could get married He states he is a professional cook and there was no reason for him to be terminated

Cp had no comparators or witnesses to support his allegation

I am requesting this case be dismissed because Cp has failed to provide the necessary evidence that would establish a link between his protective class and Resp's decision to terminate his employment Cp was terminated for lawful reasons
 This case is designated a "C"

B - 5 - 6

BEFORE THE BUREAU OF LABOR AND INDUSTRIES

Civil Rights Division

Complaint of Unlawful Employment Practice

35655

JUL 1996

COMPLAINANT

Case No

Attorney

PT-EM-SO-960723-1059

David Sims
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Portland, OR 97212

Renée E. Jacobs
CRISPIN & ASSOCIATES
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Portland, Or 97204-3236
(503) 224-2007

Phone (503) 249-1597

RESPONDENT

Besaw's Cafe
2301 NW Savier
Portland, OR 97210

Phone (503) 228-2619

Contact. Owner

Headquarters Same

No of Employees 15

County Multnomah

ORS 659 030, Portland Ordinance §23.01

I, David Sims, being first duly sworn, do depose and say as follows.

Legal basis for claim

I was hired as a part-time cook on May 22, 1996. A few days into my employment, I asked my supervisor, Bill, how I was doing and if I could improve on my performance. Bill said I was doing fine, but that I might "want to tone it down a little." I didn't understand what he was saying and asked him what he meant. He told me that the owner of the café didn't like gay people and that only a few had worked there for any length of time over the years. Bill said that one gay person they got rid of very quickly, and another had been in the closet for a long time. When that person finally came out a few weeks before leaving, the owner's wife was shocked because she had previously liked him very much. I was fired shortly thereafter and was told that I "wasn't quite what Besaw's was looking for."

The following causes me to believe Respondent's treatment constituted illegal discrimination

Bill's comments made it very clear that Besaw's would not tolerate an openly gay worker

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- B - 3 6

The conduct by Respondent also violates Portland City Code §23 01.050 and I am entitled under §23 01 080 to recover general compensatory damages, punitive damages, and attorneys' fees

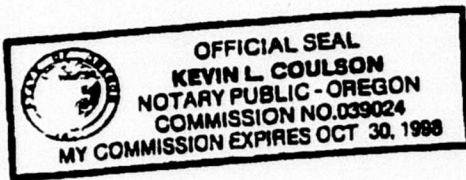
I swear or affirm that I have read the above complaint and that it is true to the best of my knowledge, information and belief

Date 6/7/96 Your signature *Kevin L. Coulson*

Subscribed and sworn to before me this 7th day of June
1996

Kevin L. Coulson
Notary Public

10/30/98
Date on which commission expires



RESOLUTION No.

35655

Confirms authority of the City Attorney to file an appeal in Sims v Besaw's Cafe, in which validity of private right of action under City of Portland Civil Rights Ordinance, P C C 23 01 has restricted (Resolution)

- WHEREAS The City Council enacted Portland City Code Section 23 01 in 1991 in order to provide basic civil rights protections to Portland citizens on the basis of sexual orientation and source of income
- WHEREAS P C C 23 01 is modeled directly on the state civil rights law, ORS Chapter 659, and provides the same avenues of both administrative review through the State Bureau of Labor and Industries and review in court
- WHEREAS P C C Chapter 23 01 has provided victims of discrimination on the basis of sexual orientation and source of income was a unique and important source of protection from discrimination
- WHEREAS The private right of action conferred under P C C Chapter 23 01 is a crucial component of the civil rights protections intentionally created by the City Council in 1991 and is available to victims of discrimination on the basis of race, gender, marital status, familial status, disability, national origin, age and other categories
- WHEREAS P C C 23 01's conferral of a private right of action was denied by a Multnomah Circuit Court decision in Sims v Besaw's Cafe
- WHEREAS Resolution of the validity of the private right of action under P C C 23 01 is necessary to private all litigants a clear understanding of the scope and effect of the City's 1991 ordinance
- WHEREAS Council earlier authorized intervention in Sims v Besaw's Cafe, or any comparable lawsuit in which P C C 23 01 is being challenged, and City did intervene in that case, and an appeal is now necessary and appropriate

NOW THEREFORE, BE IT RESOLVED that the City Attorney is authorized to pursue an appeal in Sims v Besaw's Cafe or any comparable case in which the validity of the private right of action under PCC 23 01 is being challenged

Adopted by the Council, **NOV 12 1997**
Mayor Vera Katz
Madelyn Wessel br November 7, 1997
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BARBARA CLARK
Auditor of the City of Portland
By *Bella Olson*
Deputy

1724

Agenda No

RESOLUTION NO

35655

Title

Confirm authority of the City Attorney to file an appeal in Sims v Besaw's Cafe, in which validity of private right of action under City of Portland Civil Rights Ordinance, P C C 23 01 has restricted (Resolution)

INTRODUCED BY	Filed
Mayor Vera Katz	NOV 7 1997
NOTED BY COMMISSIONER	Barbara Clark Auditor of the City of Portland
Affairs	By <u>Cay Kershner</u> Deputy
Finance and Administration <i>OK JLS</i>	For Meeting of _____
Safety	ACTION TAKEN
Utilities	
Works	
BUREAU APPROVAL	
Bureau	
Prepared by <i>mw</i> Date Madelyn Wessel br November 7, 1997	
Budget Impact Review	
____ Completed ____ Not Required	
Bureau Head	

AGENDA		FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS		
Consent	Regular XX	Francesconi	Francesconi	YEAS ✓	NAYS
NOTED BY		Hales	Hales	✓	
City Attorney	<i>mw</i>	Kafoury	Kafoury	✓	
City Auditor		Sten	Sten	✓	
City Engineer		Katz	Katz	✓	