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Partnership awarded in bias case

By Laurie Cohen

In a ruling that touches the most sensitive management decisions in law and accounting firms, a federal judge has ordered that a woman be made a partner in Price Waterhouse after she had been rejected as a result of sex discrimination.

Labor law experts said the decision marks the first time a court has ordered a person to be made a partner in a professional firm as a remedy for dis-

crimination. Partners, in contrast to other employees, typically have an equity stake and a vote in the organization.

"It's an extraordinary remedy," said Gary Skoning, an attorney with the Chicago law firm of Seyfarth, Shaw, Fairweather & Geraldson. "Ordinary partnership considerations would suggest that partnerships are voluntary organizations."

The ruling Monday by U.S. District Judge Gerhard Gesell

in Washington stemmed from a case that has continued for six years and has been to the Supreme Court and back. The suit was filed by Ann Hopkins, a consultant at Price Waterhouse, who argued that her sex was a significant factor in the denial of a partnership to her 1983.

Evidence at the trial showed that Hopkins was told to "walk more femininely, talk more femininely, dress more femininely, wear makeup, have her

hair styled and wear more jewelry" to improve her chances for a partnership.

Gesell also ordered the firm to pay Hopkins between \$300,000 and \$400,000 in back pay, said James Heller, Hopkins' attorney. Hopkins, 46, has been working as a consultant to the World Bank, Heller said.

Hopkins joined Price Waterhouse in 1978 and was considered for partnership four
See Bias, pg. 6



KRTN photo by Timothy Murphy
Ann Hopkins filed a lawsuit against Price Waterhouse.

Bias

Continued from page 1

years later. At the time, other partners praised her as "outstanding professional" with "a strong character, independence and integrity." She later was told a decision on partnership was put on hold. She subsequently resigned, and in 1984 filed suit alleging that sex discrimination was the reason for her failure to be promoted to a partnership.

Gesell's ruling means that partnerships "are just another form of employment," said Heller. "People can't hide behind that and say they can discriminate."

New York-based Price Waterhouse, the nation's sixth biggest accounting firm, said in a statement that it's studying the decision. "Price Waterhouse staff are judged solely on the basis of relevant and non-discriminatory business and professional criteria, and we continue to believe that this was true in [Hopkins'] case," the firm said.

The ruling may prompt partnerships, which also include many engineering and architectural firms, to use more objective standards and better documentation in their selection processes, labor law specialists said.

"Partnerships are going to have to be increasingly circumspect about the way in which they debate and the way in which they document the debate about the admission of new partners," said Skoning.

"Historically extraneous factors have drifted into the deliberation process. These extraneous factors

can result in serious and unfortunate legal consequences."

Some women's advocates, while praising the ruling, said it may result in less blatant forms of discrimination.

"It's very significant that the trial court recognized that just giving the promotion decision back to the partnership wasn't sufficient," said Claudia Withers, deputy director of the Women's Legal Defense Fund in Washington.

But "discrimination where it exists will be driven even further underground," she said. "It doesn't mean it won't exist, it will just be harder to uncover."

In a 1984 ruling, the Supreme Court said that Title 7 of the 1964 Civil Rights Act applied to partnership decisions. But because the female lawyer involved in that case didn't want to return to her firm Atlanta's King & Spaulding, the question of awarding a partnership wasn't addressed, Heller said. Hopkins has repeatedly said she wants to be a Price Waterhouse partner.

Title 7 forbids job discrimination based on race, sex, religion and national origin.

As a result of that case, "law and accounting firms have been aware that partnership decisions would be subject to scrutiny under Title 7," said Sara Herrin, an attorney at Jackson, Lewis, Schnitzler & Krupman in Chicago.

Hopkins' case reached the Supreme Court last May. In a major ruling, the court put the burden of proof on employers in cases where employees show evidence that racial or sexual discrimination significantly influenced promotion or other employment decisions.

But the court also rejected a "clear and convincing" standard of proof set by a lower court in such cases. It said instead that in cases where an employer offers mixed motives for a personnel decision, it need only show by "a preponderance of evidence" that racial and sexual bias did not influence the action.

The Supreme Court sent the case back to Gesell for further

hearings based on the altered standard of proof. Gesell found that Price Waterhouse didn't meet the eased standard.

The accounting firm "intentionally maintained a partnership evaluation system that permitted negative, sexually stereotyped comments [by partners] to influence partnership selection," the judge wrote.