



## Second Circuit Revives Salesman's Discrimination Claim

June 14, 2011

### O'Reilly v. Marina Dodge, Inc., No. 10-2977-CV (2d Cir. May 19, 2011)

The Second Circuit recently vacated a district court's grant of summary judgment to Marina Dodge in an employment discrimination case. The case was remanded to the district court for a determination whether (1) the employer's explanations for firing the Plaintiff, O'Reilly, were pretextual; or (2) if O'Reilly's age was the "but for" reason he was fired. If either of these questions is answered in the affirmative, the district court should find that O'Reilly's termination was discriminatory.

This employment discrimination case dealt with the circumstances surrounding the termination of one of Marina Dodge's service department salesman, Terrence O'Reilly. O'Reilly began employment in 1999 at Marina Dodge, and according to a letter of recommendation from O'Reilly's supervisor, during O'Reilly's tenure at the company he performed with "great excellent quality of customer satisfaction." However, after almost a decade of working at Marina Dodge, O'Reilly, 58 years old at the time of his termination, was replaced with a 36-year old salesman. When questioned why O'Reilly was terminated, Marina Dodge's management said that "[the 36-year old] would be a better option than [O'Reilly] as a result of [Marina Dodge's] prior experiences with [the 36-year old] and Plaintiff O'Reilly's continued disorganization, lackadaisical approach to his job performance, failure and refusal to embrace new initiatives to increase profitability, and his negative attitude about the workplace."

Since Marina Dodge presented a non-discriminatory reason for firing O'Reilly, the Court stated that it was required to look at the evidence proffered by the plaintiff and weigh it against the defendant's evidence. Under this standard, the Court of Appeals, in considering whether the district court's grant of summary judgment was proper, gave the following reasons why it was not:

- 1. Job Performance:** Since the 36-year old "would be a better option" and O'Reilly had a lackadaisical approach to his job performance, the Court assumed that Marina Dodge thought that O'Reilly's job performance was unsatisfactory, but the evidence presented did not support this conclusion. For example, O'Reilly was "never told that his job performance was unsatisfactory, never was disciplined, never received a written or verbal warning, never was told he was not producing enough, and never was sent a termination letter detailing the reason he was fired."
- 2. Resistance to New Initiatives:** In regard to Marina Dodge's claim that O'Reilly was fired because of his "failure and refusal to embrace new initiatives to increase profitability," the Court determined that there was sufficient evidence to dispute this pretext. For instance, when Marina Dodge changed its bonus

structure, O'Reilly reached a number of the milestones and regularly received monthly bonuses for his achievements.

3. **Older Employees at Marina Dodge:** Finally, the Court discredited the Defense's inference of non-discrimination through the hiring of employees older than O'Reilly by stating, "although people above 59 worked at Marina Dodge after O'Reilly was fired, none worked in the Service Department."

The Second Circuit found that the cumulative weight of the evidence presented by the Plaintiff was more than enough to allow a reasonable fact-finder to determine that Marina Dodge's reasons for terminating O'Reilly were pretextual, and not for the non-discriminatory reasons provided. Thus, the case was remanded for further proceedings.