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US Appeals Court OKs trans suit,
by PlanetOut News Staff

SUMMARY: A federal judge is ordered to hear the case of a transwoman who was told to go home and change clothes to apply for a loan.

Gender presentation is covered by a federal law against sex discrimination in lending, the U.S. First Circuit Court of Appeals ruled June 8 in Boston in a precedent-setting decision. The appellate panel reinstated a lawsuit brought by Gay and Lesbian Advocates and Defenders (GLAD) on behalf of Lucas Rosa, a biological male whose dress and appearance are feminine, against Park West Bank & Trust Company. Rosa's discrimination lawsuit itself will next be heard by the same federal district judge who previously dismissed the case.

Rosa sought an auto loan from Park West in Holyoke, Massachusetts on July 21, 1998.

When asked for identification, Rosa, who as usual was wearing makeup and feminine clothing, offered three different photo ID's portraying different gender presentations. The loan officer did not process the loan application further, but instead told Rosa to return looking like one of the more masculine photos. The loan officer would only supply the application form after Rosa "went home and changed," as Rosa tells it. Rosa said, "It was a humiliating experience to be told to change how I look in order to apply for a loan. No one should have to go through what I did simply to receive a routine service from a bank."

Rosa did not return to Park West but did file a sex discrimination lawsuit charging that the bank had violated the federal Equal Credit Opportunity Act (ECOA) as well as state anti-discrimination laws.

The bank's attorney Robert Dambrov argued that, "There was confusion over whether there was a proper identification here," since the feminine-appearing Rosa had produced an ID showing an apparent male "with short cropped

hair of a different color." Dambrov said that when the loan officer "raised the issue, the plaintiff got up and walked out. The plaintiff alleges the bank employee told him to come back dressed as in the pictures. The bank denies that."

In October 1999 U.S. District Court Judge Frank Freedman threw out the case, maintaining that the ECOA prohibited neither anti-gay discrimination nor discrimination based on dress.

Now the three-judge appeals panel has reversed that decision, ordering Freedman to hear the case because sex discrimination may indeed have been involved. A seven-page ruling written by Justice Sandra Lynch said, "We cannot say at this point that the plaintiff has no viable theory of sex discrimination consistent with the facts alleged. The evidence is not yet developed and thus it is not yet clear" just why Rosa was told to go home and change.

While those statements are less than a ringing endorsement, GLAD staff attorney Jennifer Levi, who argued Rosa's case, underscored its precedent-setting significance. She said after the ruling, "Today's decision puts the business community on notice that it cannot exclude any person from employment, credit or services simply because of stereotypical beliefs about how real men and women should look or act. We know that many people face discrimination, including gay, lesbian and transgendered people, because they do not meet sex stereotypes. Unfortunately, some courts have carved out an exception that excludes such people from coverage. This decision recognizes that federal law prohibits different treatment because of sex, including when it is different treatment of transgendered or gay people."