

## Without Evidence Of Discriminatory Bias, Employer's Business Reason For Termination Upheld

In *Batarse v. Service Employees International Union, Local 1000* (2012) 209 Cal.App.4th 820, the court addressed whether an employee's offered evidence of retaliatory conduct was sufficient to overcome the employer's business reasons for termination in a suit alleging racial discrimination under the California Fair Employment and Housing Act (FEHA). The court of appeal ruled in favor of the employer and held that without evidence of discriminatory motive, the case did not have merit.

The plaintiff, a former attorney, applied for a position with Service Employees International Union, Local 1000 (SEIU) that required him to provide representation services to union members. When asked in the job interview why he stopped practicing law, he cited his divorce and issues with his law partners. The plaintiff was hired for the position.

The plaintiff claimed he was required to work with an "unpleasant and offensive" local union president who soon wanted him fired. He complained to a co-worker that his mistreatment by the local union president was based on his race and/or gender. Soon after this, SEIU's general counsel terminated him. In support of the termination, the employer cited to, among other things, the plaintiff's provision of false information in his employment application and failure to disclose that the bar had previously disciplined him for his failure to respond to client inquiries and competently perform legal services. The plaintiff did not dispute his state bar history.

After the plaintiff filed suit for racial discrimination, SEIU moved for summary judgment, arguing that he could not offer any evidence to rebut its legitimate reasons for terminating him or proof of discriminatory intent. The trial court granted the summary judgment motion. The court of appeal agreed, ruling that an employee must present evidence that the employer's conduct was intentionally discriminatory, and not just "wrong, mistaken, or unwise."

Under FEHA, there is a three-part evidence test. First, an employee has the burden to show that discrimination could have occurred. If such a prima facie case is shown, then the burden of producing evidence shifts to the employer, who must offer a legitimate, nondiscriminatory business reason for its conduct. If the employer meets that burden, then the employee must provide evidence that the offered business reason is untrue or that the employer acted with a discriminatory motive. *Batarse* explains how an employee failed to meet the last part of this test.

The court held that the plaintiff's evidence of discriminatory intent was insufficient. He claimed, for example, that "he was replaced by a Hispanic individual" who was "no more qualified than (he was) for the position," but did not cite evidence to support his claim. The plaintiff also presented affidavits intended to show the local union president's "inability or refusal to get along with Caucasian males." However, the court found such evidence failed to prove any racial bias, calling it "mere opinion" about one's "conduct and motivations." The evidence appeared to show that the local union president directed her "abhorrent behavior" at everyone, not just

# CLIENT NEWS BRIEF

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Number 77

towards a specific race or gender. Additionally, the plaintiff's retaliation claim lacked merit because there was no evidence the person who made the decision to terminate him knew of the plaintiff's race or that he had complained about any discrimination. Nothing presented by the plaintiff disproved the business reasons for termination or proved unlawful bias.

*Batarse* supports the principle that if an employer has a good faith, legitimate business reason for terminating an employee, the courts will shift the burden to the employee to provide "substantial" evidence that the reason was false/pretextual and/or done with discriminatory animus. If you have any questions about this decision, or how it impacts your current litigation or pending claims, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#), or download our [Client News Brief App](#).

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