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\$1.6 Million Employment Bias Award Upheld by Manhattan Appeals Court

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\$1.6 Million Employment Bias Award Upheld by Manhattan Appeals Court

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Tags: **New York City Human Rights Law, Gloria's Tribeca**

Inc., Edward Globokar, Derek T. Smith Law Group, Justice Carol

E. Huff, Mirella Salemi

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BY ARTHUR S. LEONARD | A state appeals court in Manhattan has upheld a jury verdict of \$1.6 million in damages in a discrimination case brought by a lesbian chef under the New York City Human Rights Law against a Tribeca Mexican restaurant.

In a March 20 ruling, the New York Appellate Division found the award to Mirella Salemi, who worked at Mary Ann's Mexican Restaurant from 2002 to 2007, was not excessive.

Salemi filed her discrimination suit against Gloria's Tribeca, Inc., d/b/a Mary Ann's, and its owner Edward Globokar. According to an employee who answered the phone at Mary Ann's, Globokar is no longer the owner of that restaurant.

Salemi, who worked as a chef and manager at Mary Ann's, charged the employer with discrimination based on religion and sexual orientation. At the trial, she presented evidence that the restaurant held weekly prayer meetings viewed as mandatory for staff, and that Globokar and the pastor leading the prayers repeatedly stated that homosexuality is "a sin" and that "gay people" were "going to hell." Salemi, who was raised Catholic, alleged she was generally subjected to "an incessant barrage of offensive anti-homosexual invective," according to the court's opinion, including frequent use of the word "faggot."

"Additional evidence demonstrated that as a result of Globokar's improper conduct, plaintiff was retaliated against for objecting to his offensive comments, choosing not to attend workplace prayer meetings, and refusing to fire another employee because of his sexual orientation, and was constructively discharged" herself, the court wrote.

Constructive discharge is conduct by a business that leaves an employee with no choice but to leave.

The court rejected Globokar's argument that the trial judge, Justice Carol E. Huff, should have instructed the jury, in considering Salemi's claim of a hostile workplace environment, to determine whether the conduct alleged was "severe and pervasive." The appeals court also rejected the argument that Huff erred in not drawing the jury's attention to that portion of the Human Rights Law forbidding religious discrimination. The panel found that section was intended to protect "victims of employment discrimination, not perpetrators of discrimination."

Huff had instructed the jury that Globokar had "a right to express his religious beliefs and practice his religion, provided that he does not discriminate against his employees based on religion or sexual orientation."

The court found the amount of damages to be within the range of what has been awarded in similar cases and that the punitive damage portion of the award — \$1.2 million — was not excessive. The balance of the award, \$400,000, was compensatory damages for the constructive discharge and accompanying emotional distress.

Salemi is represented by Derek T. Smith Law Group, William G. Kaupp of counsel. The Appellate Division panel was made up of Justices Rolando T. Acosta, Dianne T. Renwick, Karla Moskowitz, Helen E. Freedman, and Paul G. Feinman.

Globokar's attorney of record, Steve S. Efron, did not immediately return a Gay City News request for comment.