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Judge vacates \$500K judgment against WUFO: Its lawyer 'disappeared from the case'

Patrick Lakamp

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WUFO owner Sheila Brown at her station in Buffalo in 2016.

Mark Mulville

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A federal judge has vacated a nearly \$500,000 award against WUFO Radio, saying the shortcomings of the station's previous lawyer amounted to extraordinary circumstances that justified dropping the default judgment.

The award went to an ex-WUFO program director who sued the station alleging religious and gender discrimination.

Sheila Brown, the owner and general manager of WUFO, told the judge that the default judgment from earlier this year took her by surprise. She said her previous lawyer, Anthony L. Pendergrass, had assured her all was well with the case and that he was handling it with utmost care, according to court records.

Instead, Pendergrass persistently missed deadlines, prompting U.S. District Judge William K. Sessions to decide the case in favor of Robert Frank of Garner, N.C.

Shortly after the judgment, Brown hired new legal counsel, apologized to the court, explained she was not aware of the missed deadlines and promised the judge the station would meet its obligations to ensure the case is ready for trial, according to a court record filed last February.

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Brown told the judge she learned of the default judgment from a news reporter and that her messages to Pendergrass went unreturned.

"The circumstances in this case focus primarily on failures by WUFO's former attorney," Sessions said in his ruling Thursday. "To be extraordinary circumstances ... a lawyer's failures must be so egregious and profound that they amount to the abandonment of the client's case altogether. This case meets that demanding standard."

Pendergrass was apparently suffering from poor health and often unable to work on the case, Sessions said in his ruling. When Pendergrass asked for another extension of time, citing health reasons, the judge instructed him to provide his medical records but Pendergrass did not respond.

"WUFO ... was either unaware of these issues or was misled as to the case status," Sessions said. "At this point, former counsel has disappeared from the case, new counsel has been retained, and the case may now move forward."

Pendergrass could not be reached for comment.

The radio station broadcasts as Power 96.5 FM and Mix 1080 AM – playing urban adult contemporary music and classic hip-hop and also carrying religious and community affairs talk shows, among other offerings.

Frank sued Vision Multimedia Group-WUFO Radio LLC in 2017, accusing Brown of making numerous comments regarding his religion and gender, including that he was not "godlike" and that God had told her he "needed to perform in a Christian manner," according to his lawsuit. Brown often referred to how women would perform their duties and stressed that she preferred working with a female staff, according to his lawsuit.

In her court papers, Brown accused Frank of aggressive, rude and condescending behavior and called his comments to other employees "wholly inconsistent with our values and family atmosphere."

"Mr. Frank's termination had nothing to do with his gender or religion, and he has fabricated statements by me in his complaint," Brown said in court papers. "I never stated that he was not godlike."

The "final straw" occurred in late April 2016, she said in court papers, some two months after Frank started as program manager. She said she learned Frank told a former employee that he was unhappy with how she was running the station and that he was going to take over the business and make her a sales manager, apparently unaware Brown was the sole owner of the company. WUFO fired him on April 28, 2016.

"We thank the court for its time and careful attention, and we look forward to defending the case on its merits," attorney Eric M. Soehnlein, who now represents WUFO, said of last week's ruling.

"Obviously, I'm not happy," said attorney Larry Kerman, who represents Frank. "We move on, and we will try to get an ultimate judgment for the client."

For a second time, the judge ordered WUFO to pay fees and costs incurred by Frank during the lawsuit, which so far amount to more than \$34,000, according to Kerman.

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