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Arbitrator Awards \$269,000 to Outed Gay Man

By Eron Ben-Yehuda
Daily Journal Staff Writer

A San Francisco gay man demeaned because of his sexuality by a Spanish radio talk show host during a live broadcast has recovered \$269,000 in an arbitration.

Robert Hernandez didn't know he was on the air when he received a call from Paul Brindis of "The Kaul Brindis and Papiho Show."

Brindis pretended to be a man who had seen Hernandez at a gay bar and wanted a date, Hernandez, thinking the call was a private conversation, expressed interest in getting together.

Then Brindis revealed that the call was being broadcast. The show is heard in California, Arizona and Texas.

"While Mr. Hernandez was stunned and upset, Mr. Brindis and the other on-air personalities laughed, clapped and used the word 'fido,' a term derisive of homosexuals," San Francisco arbitrator Rebecca J. Westerfeld wrote in her July 29 decision.

"The facts here are more than sufficient to support a finding of extreme and outrageous conduct," Westerfeld wrote.

Hernandez's legal team had asked for \$3 million to \$9 million in emotional distress and punitive damages.

Nevertheless, Hernandez's lead counsel, Peter S. Rukin, said he's pleased with the arbitrator's recognition that his client was harmed by what he referred to as a "despicable prank."

"[Hernandez] was emotionally devastated by it," Rukin of San Francisco's Rukin Hyland Doria & Dufraire said. "He was not 'out' to the world at that point."

Rukin's co-counsel on the case was Stephanie A. Doria.

Hernandez and Brindis worked at different subsidiaries of Hispanic Broadcasting Corp.

Hernandez sued Hispanic Broadcasting Corp., later taken over by Univision Communications Inc.

Defense counsel Gary L. Bostwick of Los Angeles' Sheppard Mullin Richter &



S. TODD ROGERS / Daily Journal

"[Hernandez] was not 'out' to the world at that point. He was emotionally devastated. He wasn't the person that he used to be," lead plaintiffs' counsel Peter S. Rukin, left, with co-counsel Stephanie A. Doria, said of the change in their client.

He was not put on evidence that rose to a showing of outrageous conduct," Bostwick wrote. Hernandez worked as an account executive at San Francisco radio station KSOL.

On Oct. 18, 2002, Hernandez, 42, was driving to work when he received the call on his cell phone.

"Mr. Hernandez put on evidence of something more than a violation of the niceties of polite conversation, but he did

not put on evidence that rose to a showing of outrageous conduct," Bostwick wrote. Hernandez worked as an account executive at San Francisco radio station KSOL.

On Oct. 18, 2002, Hernandez, 42, was driving to work when he received the call on his cell phone. Brindis, who worked in a Houston station, got Hernandez's number from KSOL employee Edwin Rodriguez.

After the call, Hernandez immediately drove to the KSOL offices.

"He arrived to find his colleagues gathered in the station's reception area discussing the call, which had been broadcast live in the KSOL offices," the decision said.

In court documents, Rukin adds that a radio audience of "hundreds of thousands of individuals" also heard it.

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Following the incident, Hernandez took some time off from work. After he returned, his performance began to suffer, Westerfeld wrote.

"He wasn't the person that he used to be," Rukin said.

Hernandez quit his job in January 2003. He sued for violation of his right to privacy, intentional infliction of emotional distress, constructive discharge and workplace sexual harassment.

Westerfeld found liability based only on intentional infliction of emotional distress.

She declined to impose liability on Hispanic Broadcasting Corp. for harassment because Hernandez "presented no evidence that management knew or should have known" that the call would be made.

Brindis decided to call Hernandez "on the spur of the moment," Westerfeld wrote.

"The evidence also established that HBC took immediate corrective action to ensure that the conduct was not repeated," she wrote. "Mr. Rodriguez was terminated. Mr. Brindis was warned and never repeated the conduct."