

The State

Tenant Sues to Block Landlord Exemption

By Hallye Jordan

Daily Journal Staff Writer

SACRAMENTO — Claiming the state is ready to favor landlords' religious beliefs over those of tenants, an attorney has sued to stop the Los Angeles Superior Court from granting an exemption from state discrimination laws to a landlord who refused to rent to an unmarried couple.

"I can't imagine the courts in this state ruling that only landlords have religious freedom rights under the Constitution," said Thomas F. Coleman, a Los Angeles practitioner who represents Verna Panzo. Panzo and her former boyfriend were denied a Downey apartment by John and Agnes Donahue, who said it would be condoning sin to rent to an unmarried couple.

"I also can't imagine that the courts will want to get into religious disputes between landlords and tenants, whether it is over the issue of unmarried cohabitation, homosexuality, having a boyfriend spend the weekend, a single female tenant getting pregnant, or nonsexual matters such as drinking alcohol, eating pork or dancing," Coleman said. "Everyone is a sinner in the eyes of someone else."

The lawsuit, filed Friday in the 2nd District Court of Appeal, effectively would relitigate a ruling by the same court that found the Donahues were entitled to a religious-freedom exemption from anti-discrimination laws, *Donahue v. Fair Employment and Housing Commission*, S024583. The California Supreme Court granted review of the case in February 1992, but reversed itself in October.

In *Panzo v. Superior Court*, B081985, Thomas hopes to prevent the court from issuing a peremptory writ granting the Donahues a religious exemption. Such "state action," he argues, "will constitute an infringement of Ms. Panzo's rights to free exercise of religion" under the California and U.S. constitutions.

Carlsbad attorney Thomas F. Donahue, who represented his parents, said his initial reaction is the lawsuit is without merit.

"That sort of objection could be made in every case where a religious exemp-

tion is granted," Donahue said. "The purpose of the 'compelling state interest' test is to determine whether the state law unduly burdens the religious freedom of the person whose actions have been outlawed by the state law. ... In this case, the person affected was the landlord."

Donahue said while the law affected his parents' income and their religious beliefs, Panzo "was affected, but she was not burdened. She can go next door and rent next door. She still is able to exercise her religious freedom, but just not at this one place."

Deputy Attorney General Kathleen W. Mikkelson, who represents the FEHC in the Donahue case, said she was pleased Coleman had filed the lawsuit.

"All of us have been aware all along that it is an issue — that tenants, and not just the landlords, have rights under the Establishment Clause," Mikkelson said. She added in 1991, the California Supreme Court, in *Sands v. Morongo*, 53 Cal.3d 863, ruled that preferring one religious view over another, or the lack of one, violates the "no preference" guarantee of the state constitution.

In a declaration, Panzo said she specifically rejected the teachings of the Catholic Church, in which she was baptized and raised, and formed her own spiritual and religious beliefs about love, sex and relationships.

The lawsuit claims Panzo was prohibited from raising her religious beliefs before the commission and the trial court because she was not a party to the actions, which were devoted solely to determining whether the Donahues violated state laws prohibiting marital-status discrimination. At the appellate level, the court was barred from considering matters outside the record, Coleman said.

"As a practical matter, the only way out of this mess — religious warfare between landlords and tenants — is for the courts to rule that the state has a compelling interest in providing discrimination-free housing and therefore disallow so-called 'religious-freedom exemptions' from the civil rights laws," Coleman said.

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Religious-Rental Case Appealed to High Court

By Hallye Jordan

Daily Journal Staff Writer

SACRAMENTO — The California Supreme Court on Tuesday was asked to block a trial court from granting a religious exemption from civil rights laws to a landlord who refused to rent to an unmarried couple.

The petition, which was denied by the 2nd District Court of Appeal Friday, also asks the high court to decide whether courts must provide a judicial forum to a tenant to present evidence of her own sincerely held religious beliefs before protecting the contradicting religious beliefs of a landlord.

The petition, *Panzo v. Superior Court*, S038228, effectively asks the court to review a case it had planned to decide but abruptly dismissed last fall. The appeal was brought by Verna Panzo, who with her former boyfriend was denied a rental in 1987.

After agreeing in February 1992 to hear the initial challenge, *Donahue v. Fair Employment and Housing Commission*, S024538, the court in October reversed itself, stating its grant of review was "improvidently granted."

As a result, the 2nd District Court of Appeals' ruling that would require the state Fair Employment and Housing Commission to grant the landlord an exemption from state laws prohibiting housing discrimination was put into effect.

In the current case, Panzo is asking the high court to prevent the Los Angeles Superior Court from issuing a writ that would recognize an exception for the landlord from the anti-discrimination statutes.

Los Angeles sole practitioner Thomas F. Coleman, who represents Panzo, contends such an action would violate Panzo's own religious freedom rights. The petition states that her beliefs were never considered by trial or appellate courts or by the Fair Employment and Housing Commission, which nonetheless found the landlords, John and Agnes Donahue of Downey, had violated fair housing laws.

Coleman, who also is representing a

tenant in a similar case recently argued before the 3rd District Court of Appeal, *Smith v. Fair Employment and Housing Commission*, Civ. No. C007654, said the state is poised to give the religious beliefs of landlords priority over those of tenants.

Such action would not only violate the due process rights of Panzo, he argued, but also the "no [religious] preference" clause of the state Constitution. In addition, the free exercise and establishment clauses of both the state and federal constitutions would be violated if the state gives preference to the sincerely held religious beliefs of a landlord that are contrary to those of the tenant, Coleman contends.

Like *Donahue*, the Smith case also involves landlords who refused to rent to an unmarried couple on religious grounds. The case is pending before the appellate court in Sacramento, awaiting final briefings on the effects of recent case law and the federal Religious Freedom Restoration Act enacted in November.

Although *Donahue* was expected to be the precedent-setting case, the Supreme Court's abrupt decision to not grant review shifted the focus to Smith.

Coleman dismissed arguments that the two cases were "isolated incidents." He noted a 1987 Los Angeles Times poll indicated 39 percent of the respondents said they "always" and 10 percent said they "often" believe it is a sin for unmarried people to have sexual relations.

A 1987 poll conducted by Yankelovich Clancy Shulman showed that 54 percent of the respondents said they believe it is "morally wrong" to live with someone outside of marriage.

"Millions of landlords may take advantage of a religious exemption," he said.

In addition, such state action could affect half a million households in California alone, he said, citing the 1990 Decennial Census, which indicated there are 495,223 unmarried-partner households in California, 458,621 of which involved couples of the opposite sex. The census counted more than 3 million such households nationwide.