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Bar Talk

"ANTIGAY OR ANTIHUMAN?"

THE SULLIVAN LAWSUIT IS RAISING SOME UGLY QUESTIONS

Vivia Chen

Several weeks after he filed the sexual orientation discrimination suit that set the legal world buzzing, former Sullivan & Cromwell associate Aaron Charney sat in his apartment in Manhattan's Hell's Kitchen, far from the marble halls of the firm where he once hoped to be a partner. Charney, 28, was baffled that the firm had deactivated his BlackBerry and put him on leave. 'I asked [S&C labor partner] Ted Rogers when I could go back to work, and he wouldn't say,' says Charney. 'I've never lagged in my responsibility. . . . My dream was to be there.'

'He, more than anyone in the class, was drinking the Kool-Aid,' says one associate of Charney. 'He wanted to be partner more than anything else.'

Whatever shreds of Charney's dream survived the filing of his lurid complaint on January 16 were blown away on February 1, when Sullivan & Cromwell filed a countersuit of its own. The firm brought out some big guns--Zachary Fasman, chair of the employment group at Paul, Hastings, Janofsky & Walker, and Charles Stillman, a legend of the New York white-collar defense bar--and it accused Charney of breach of fiduciary duty and stealing privileged information, among other things. Charney was also officially dismissed from the firm.

Right now, the only thing Charney and his former firm seem to agree on is the unhappiness caused by the litigation. S&C chairman H. Rodgin Cohen has been especially unnerved by the storm Charney's complaint stirred up. Under his leadership, the firm has been the poster child for gay-friendliness. With 11 openly gay partners (this year S&C made its first openly lesbian partner, Stacey Friedman), the firm is hands-down the gayest partnership on Wall Street.

The complaint not only threatens to despoil Cohen's reputation, but shows the limits of his power within the firm. 'We can't fire everybody who might say something inappropriate, who does something foolish under pressure,' says Cohen, adding that partners and associates who step out of line receive counseling. '[But] I'm 100 percent convinced that this firm is no worse than others.'

Maybe so. But the lawsuit has caused considerable angst among current associates--though they weren't very happy to begin with. In the last two years, S&C has scored near the bottom in The American Lawyer's midlevel associates survey. And according to an S&C memo leaked to The Wall Street Journal in January, the firm had a 31 percent attrition rate among its associates in 2005. (The rate improved in 2006, says Cohen.)

Charney's complaint, say former associates, accurately captures the ambience of the firm, especially the mergers and acquisitions department. 'Every word of that complaint rang true to me,' says one former lawyer. 'They [M&A partners] are just vulgar.'

Still, even those who express sympathy for Charney doubt that S&C partners are homophobic. 'I don't think it's

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discrimination; M&A is just a brutal group, ' says the former lawyer. 'I think this guy was treated badly and unprofessionally.' Sums up another former M&A associate: 'S&C isn't antigay, just antihuman.'

The firm's tough reaction to the Charney suit might not help soften that image. One associate says that he was disappointed by the 'very aggressive' speech Cohen gave at a recent firm open house. Cohen's remarks, this associate says, boiled down to a recitation that 'we have no problems, [and] we don't discriminate.' . . . The speech seemed to serve as a reminder that the firm is infallible.'

What's needed at this hour, says the associate, is a new message: 'Cohen keeps saying it's a meritocracy--that if you do good work, you'll rise. The problem is that that equation is too simple. Whether you are humane and treat people well should also be a consideration.'

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