

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES  
DEPARTMENT 311**

*Department of Fair Employment and Housing v. M&N Financing Corporation,  
et al., BC591206*

**Case Home Page**

**Motions for summary adjudication and to seal**

This is a case of admitted and illegal discrimination against women. The motions are granted.

I

Mahmood Nasiry is owner and president of M&N Financing Corporation, which finances used cars. When a dealership sells a used car to a customer, the two negotiate price and credit terms, such as the down payment, interest rate, number of payments, and so forth. The dealership writes the terms into a retail sales installment contract, which the dealership circulates to lenders like M&N. M&N competes with other lenders by bidding on the contract. If M&N submits the highest bid, it pays the dealership that price, assumes the risk the customer will default, and begins collecting the loan. If the buyer defaults, M&N may repossess the car or sue the customer. (See Nasiry declaration paragraphs one - six.)

In 2012, Nasiry surveyed a decade of his business experience and identified 18 to 20 factors he considered significant in evaluating whether and how much to bid on a contract. Nasiry created an Excel spreadsheet to quantify these factors into a point system. (Nasiry declaration paragraph nine.)

M&N's spreadsheet expressly listed "gender" as one factor. Nasiry wrote the Excel spreadsheet to add zero points if the customer was male and one point if female.

"My assignment of a point to a female [car] purchaser was based on the results of my ten-year survey with respect to the risk of a loan default which indicated a greater risk of default for female borrowers over the ten-year period." (Nasiry declaration paragraph 11.)

The Department of Fair Employment and Housing sued M&N and Nasiry for gender discrimination.

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## II

The motion for summary adjudication is granted. M&N's express use of gender in business decisionmaking is blatantly illegal under the Unruh Act. (E.g., *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 28-39.)

M&N offers invalid defenses for its practice. First, M&N says no individual consumers or dealerships were denied "full and equal" services. (Opposition 9:25.) This is incorrect. Nasiry admits M&N treated women differently than men. Women got a point against them. Men did not. That is not equal. Gender was not the only factor M&N considered, true, but that makes no difference. An express gender tax is illegal no matter the degree.

N&M says its practice was not "motivated by gender discrimination," which presumably means Nasiry denies ill will toward women. (Opposition 9:27-28.) Rather his motivation was, as he puts it, "legitimate business reasons/analyses." (Opposition 10:1.) Statistics do not rescue stereotypes, however, even if the statistics are accurate. (E.g., *City of Los Angeles v. Manhart* (1978) 435 U.S. 702, 707-711 (women on average live longer than men, but requiring women to make larger pension contributions is illegal), superseded in part by 42 U.S.C. § 2000e-5(g)(2), as stated in *Parris v. Keystone Foods, LLC* (N.D. AL 2013) 959 F.Supp.2d 1291, 1303.) "Practices that classify [people] in terms of religion, race, or sex tend to preserve traditional assumptions about groups rather than thoughtful scrutiny of individuals." (*City of Los Angeles v. Manhart, supra*, 435 U.S. 702, 709.)

M&N incorrectly argues its practice was not "a denial of some right to which plaintiff was entitled." (Opposition 10:13.) This begs the question. The Unruh Act entitles all Californians, including car buyers and sellers, to business decisionmaking free from gender discrimination. Nasiry admits he considered gender to be one of the "factors I consider significant" in conducting his business. (Nasiry declaration 4:1; see also *id.* paragraph 11.) When a business expressly makes gender a routine and significant factor in its decisionmaking, the plaintiff need not identify particular victims or quantify the marginal disadvantage the discrimination creates.

M&N cites the irrelevant *Harris* decision. (See *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1169 ("defendant's minimum income policy does not violate the Unruh Act") and 1175 ("A disparate impact analysis or test does not apply to Unruh Act claims."), superseded by statute as stated in *Munson v. Del Taco, Inc.* (2009) 46 Cal.4th 661, 664.)

Irrelevant as well is *Mundy v. Pro-Thro Enterprises* (2011) 192 Cal.App.4th 1, 4. That defendant did not use gender as a basis for decisionmaking.

III

The motion to seal is granted. The Department of Fair Employment and Housing seeks to seal an exhibit that reveals identifying information for a loan borrower and co-signer. The proposed sealing is narrowly and properly tailored to protect the privacy rights of these third parties.