

Court Tells Skydiver's Estate It Won't Reconsider Title VII Claim

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**Douglas M.
Oldham**
Of Counsel

On April 18, the U.S. Court of Appeals for the Second Circuit declined to reconsider the estate of deceased skydiver Donald Zarda's Title VII claim against former employer Altitude Express. Zarda filed suit claiming his employment was terminated because of his sexual orientation. Although his New York state law claim was explicitly based on sexual orientation, his Title VII claim was characterized as a sex discrimination claim. The U.S. District Court for the Eastern District of New York granted summary judgment to Altitude Express on Zarda's Title VII claim, consistent with the Second Circuit's 2000 *Simonton v. Runyon* holding that Title VII does not prohibit sexual orientation discrimination. On appeal, the court held that a plaintiff may make a sex discrimination claim based on unlawful sex stereotypes, but that Zarda failed to make this argument at the district court level. The court declined to entertain the argument that *Simonton* should be overturned, as the panel cannot overturn a previous panel's decision. The estate's attorney indicated he will petition for an en banc rehearing, the only avenue for the Second Circuit to overrule the *Simonton* precedent and consider anew whether Title VII prohibits discrimination based on an employee's sexual orientation. The case is *Zarda v. Altitude Express*, No. 15-3775.

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