

✓ ANTI-BIAS LAW

Jurists dispute fat woman's job-bias claim

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LOS ANGELES (AP) — California Supreme Court justices vigorously challenged the claim of a 305-pound woman that a Santa Cruz health food store discriminated against hiring her because her weight was seen as a handicap.

At various points, Justice Stanley Mosk asked if fat people should aspire to be Playboy bunnies, and Justice Armand Arabian questioned whether a person who "eats 24 hours a day and becomes 305 pounds" has protection under the law.

Attorney Stefanie Brown of San Francisco, representing Toni Cassista of Soquel, said that Community Foods Inc. refused to hire her as a grocery clerk because the employer wrongly perceived her as handicapped by her weight.

She argued that the company never raised image — a permissible basis for discrimination — but instead said she was not qualified for the job because she might run out of energy and be unable to stock shelves.

Cassista sued and lost her case. But a state appeals court ordered a new trial on the ground that the judge improperly placed a burden of proof on Cassista to show she would have been hired but for her handicap.

Arabian questioned whether she is considered part of a protected class under laws banning discrimination against the handicapped.

"If you want to eat 24 hours a day and become 305 pounds, the law doesn't give you any protection," he said. "But if you have a glandular, systemic or metabolic problem, you have a shot at your lawsuit."

Arabian noted there was no



Toni Cassista

... Sued Santa Cruz store

medical evidence at the trial.

He also asked, "What if I am fat and I don't perceive myself as fat?"

"Justice Arabian," exclaimed Brown. "They didn't perceive her as fat. She is fat!"

"If they had said, 'You are fat' as their reason, that doesn't violate the code. It's the assumption of what she can or can't do. They made that assumption."

The 5-foot-4 Cassista, present for the high court arguments, managed a sandwich shop and worked in restaurants and a nursing home before she applied for a job with Community Foods in 1987. She was told by members of the cooperative that her weight would limit her job performance.

Attorney Frederic Ebey, representing Community Foods, ar-

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gued it was up to Cassista to prove that an underlying condition was responsible for her obesity, which would make her part of a protected class.

"So if an obese person aspires to be a Playboy bunny, the employer would have to analyze the underlying condition?" asked Justice Mosk.

Ebey said that was not an applicable analogy.

Attorney Paul Grossman, arguing on behalf of the California

Employment Law Council, said Brown's legal analysis would mean that if an old woman with a cane applied to be a quarterback with the Los Angeles Raiders and was turned down, "She sues and wins."

Brown called that argument ridiculous.

"Not everybody who walks through the door is qualified to be a quarterback with the Raiders," Brown said. "Toni Cassista was qualified as a grocery clerk."

The 43-year-old Cassista said outside court that she pursued the case because, "Just like any

other discrimination case, it sends out a message that these kinds of actions will not be tolerated."

Cassista, who now sells computer software, said the justices' comments hurt her feelings.

"You hear someone talk about whether I eat 24 hours a day. That's absurd."

Since she filed suit, she said, she has become an activist to end discrimination against fat people.

The court took the case under submission. It was not immediately known when a decision would be reached in the matter.