

Despite the progress made toward eliminating discrimination against women, the reality is that the battle remains far from over. This assessment applies to the golf world as well. For example, allegations of gender discrimination involving a golf club membership are at the heart of *Warfield v. Peninsula Golf & Country Club*, currently pending before the California Supreme Court.

According to the courts, during Mary Ann Warfield's marriage, the board of directors of Peninsula (a non-profit entity in San Mateo) approved a "Regular Family Membership" (RFM), which it issued in her husband Richard's name. The family then used Peninsula's facilities without restriction. The Warfields paid the club's initiation fee and monthly dues with community funds. Both Mary Ann and Richard developed business contacts and clients at the club.

In a subsequent divorce settlement, Warfield was awarded, and requested the board transfer to her, the RFM. However, the board, in keeping with club bylaws, voted to terminate her RFM, and sent her a check representing its redemption value. The bylaws provided that RFMs "shall be issued only in the name of adult male person[s]" and provided that, upon termination of the marriage of a "married Regular Family Member" by divorce or annulment, "the Husband shall continue to be the Regular Family Member, and all rights, privileges and obligations shall be his." If a court awarded that membership to the female spouse (and if her husband did not purchase it back), the bylaws provided that "such Membership may, by action of the Board, be terminated."

Warfield returned the check and asked the board to reconsider. Although the board reaffirmed its vote, it invited her to apply for a new class of nontransferable, nonproprietary membership for those "who desire to use the golf club facilities, but who do not otherwise qualify for regular membership." She declined that offer, calling it a "second class citizenship membership" based upon her gender.

Warfield sued the club and board for damages and for an injunction to



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by Lawrence Savell

stop Peninsula from terminating her membership rights and privileges. Although the trial court granted her a preliminary injunction, it subsequently sustained Peninsula's objections to her complaint and dismissed the action. The California Court of Appeal reversed the dismissal of some of her claims, which then went to trial. At trial, following the presentation of evidence, the court issued a verdict in Peninsula's favor. Warfield appealed that ruling to the Court of Appeal.

In its opinion of January 8, 1993, the Court of Appeal considered Warfield's claim that Peninsula violated California's Unruh Civil Rights Act. This Act prohibits discrimination in the provision of "accommodations, advantages, facilities, privileges, or services in all business establishments of

every kind whatsoever." According to the court, the Act is "clearly a declaration of California's public policy mandate and objective that men and women be treated equally."

However, under the Act, only a "business establishment" can incur liability for acts of discrimination. Although that term has been broadly defined, the court noted that "[t]ruly selective private organizations, in contrast, are exempt from scrutiny under the Unruh Civil Rights Act for discriminatory acts." It observed that there was no "formula" for defining a "business establishment"; instead, it would examine an organization's "functions and characteristics."

The court observed that "[t]he undisputed evidence...establishes the extremely private nature of the Club." It pointed to such facts as Peninsula's: (1) geographically and otherwise selectively limited membership; (2) restrictions on use of facilities to promote privacy and intimacy; and (3) focus on recreation and social activities (despite "incidental" and "inconsequential" business activities of some members).

The court thus concluded that Peninsula, offering "continuous, personal, and social" activities largely outside public view, was a "truly private" organization rather than a "business establishment." Therefore, it ruled that the trial court had not erred in dismissing Mary Ann Warfield's claims of discriminatory practices.

The court also ruled that Warfield had not been denied her right to "fair procedure." This claim involved the effect the denial of her RFM may have had on her ability to pursue her profession. The court noted Peninsula had offered her a nonproprietary membership that would have allowed her to pursue such opportunities.

Warfield appealed the decision, and last year the California Supreme Court agreed to hear the case. The court will soon hear oral argument. *Golf for Women*® magazine will bring you the ruling as soon as possible after it is issued. □

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