

PBS Hits Back At Smiley In \$1.9M Sex Misconduct Countersuit

By **RJ Vogt**

Law360 (March 23, 2018, 9:45 PM EDT) -- PBS has responded to former nighttime talk show host Tavis Smiley's accusations that the network used unsubstantiated workplace sexual harassment claims as a pretext to drop his show, filing counterclaims that include findings from a harassment investigation it conducted and seeking \$1.9 million in unreturned budget funds.

Smiley had sued PBS in February, claiming he was ousted over untrue allegations that PBS used as an excuse to stop distributing his show following years of "racially hostile" behavior. But on Tuesday PBS denied giving "minimal assistance" over the years or breaking its contract with Smiley's production company TS Media Inc.

Instead PBS elaborated on the investigation itself, which it said commenced following a November 2017 allegation that Smiley had responded to a former subordinate's request for career-related advice by asking her to come to his house later that night "to perform a sexual act on him."

Noting that it had previously "responded with restraint" when discussing the suspended distribution of Smiley's show, PBS went on to elaborate the ensuing investigation's findings, including allegations he commented on subordinates' body parts in front of colleagues, told a female subordinate he would like to see her on her back more often, and persistently pursued subordinates for sex in hotels or at his home.

"Contrary to his public, vehement statement that he has never been accused of doing anything wrong in 30 years ... Mr. Smiley informed the investigator that he has, in fact, been the subject of two workplace discrimination or harassment/retaliation claims," PBS said in its filing. "Numerous witnesses also described a verbally abusive and threatening work environment, including reports that Mr. Smiley aggressively cursed at and belittled subordinates."

Media relations counsel Howard Bragman responded Friday with a statement from Smiley, telling Law360 that the host looks forward to the full truth coming out in court.

"More lies, half-truths and smears from PBS from an 'investigation' that never should have happened, with a result that was decided well before the inquiry was even begun," the statement said.

Smiley was one of several public broadcasting figures to lose their jobs as workplace harassment claims spiked in recent months, including fellow PBS fixture Charlie Rose and "Prairie Home Companion" host

Garrison Keillor. Beginning in 2004, he had hosted a half-hour interview program on PBS member stations until it was dropped last year.

In his suit, Smiley said his relationship with PBS was already rotten when the company launched a “trumped up” investigation into sexual misconduct allegations that, he said, hadn’t been important to the network when they were first reported in the New York Observer in February 2017, according to the suit.

He accused PBS of conducting an incomplete investigation to leverage its firing of its only African-American host when it was seeking a reason to get rid of him, but the company said Tuesday it interviewed more than 20 individuals who worked with Smiley and more than a dozen reported being subjected or a witness to unwelcome, inappropriate sexual comments or conduct.

PBS also said Smiley’s company required subordinates to sign nondisclosure agreements. When he finally agreed to sit for an interview himself, the station said he admitted to having multiple sexual relationships that may have overlapped as well as possibly having sent pornographic pictures to co-workers.

“During his interview he acknowledged that a subordinate had complained to him that his dating within the office did create tension in the workplace and ... he, himself, was aware that these encounters did, at times, create tension in the workplace because, as he stated, ‘with women, that stuff can get in the way,’” PBS said.

PBS’ counterclaims are based on a morals clause in the network’s agreement with Smiley’s production company, barring program personnel from doing anything that might reflect unfavorably on PBS.

But the broadcaster also accused TS Media of failing to repay \$1.9 million in unused funds from producing his show, based on witness testimony from the harassment investigation that Smiley’s production budget “did not add up.”

A representative for PBS declined to comment on Friday.

Smiley is represented by Ronald S. Sullivan Jr. of Harvard Law School, John K. Rubiner of Barton Klugman & Oetting LLP, and Jeffrey D. Robinson and Waleed Nassar of Lewis Baach Kaufmann Middlemiss PLLC.

PBS is represented by Grace E. Speights, W. Brad Nes, Amanda B. Robinson and P. David Larson of Morgan Lewis & Bockius LLP.

The case is TS Media Inc. et al. v. Public Broadcasting Service, case number 2018 CA 001247B, in the Superior Court of the District of Columbia.

--Additional reporting by Kat Greene. Editing by Bruce Goldman.