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Jury awards $5 million to former Virginia Beach City Council candidate in defamation suit over Facebook posts

By JAKE HARPER
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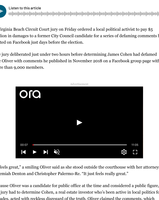
Former Virginia Beach City Council candidate Tim Kaine, right, is suing Jonathan Cohen, left, for defamation for damaging comments she says he posted on Facebook during a phone call on November 3 in Norfolk. (File / The Virginian-Pilot)

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A Virginia Beach Circuit Court jury on Friday ordered a local political activist to pay $5 million in damages to a former City Council candidate for a series of defaming comments he posted on Facebook just days before the election.

The jury deliberated just under two hours before determining James Cohen had defamed Tim Kaine in comments he published in November 2018 on a Facebook group page with more than 6,000 members.

"It feels great," a smiling Kaine said as she stood outside the courthouse with her attorneys, Jeremiah Harris and Christopher Palermo Rio. "It just feels really great."

Because Oliver was a candidate for public office at the time and considered a public figure, the jury had to determine Cohen, a real-estate investor who's been active in local politics for decades, acted with reckless disregard of the truth. Oliver claimed the comments, which included allegations about her sex life and morals, depicted her as "a woman of ill repute."

The information was published on the popular Facebook page "Vintage North End Virginia Beach an Illustrated History Archive" on Nov. 4, 2018 — two days before voters were set to elect new City Council members.

Oliver, an author and member of the city's Planning Commission who was vying for one of two at-large council seats, narrowly lost to incumbent John Moss and political newcomer Aaron Rouse.

Denton said money was not the motivating factor behind Oliver's decision to sue. She initially sought five million in damages, but Denton told jurors in his closing arguments that half that number is "sufficient to "make the point" that Cohen had behaved recklessly.

"This was about vindicating Dee Oliver," the longtime Virginia Beach lawyer said shortly after the verdict was announced. "She is a fine, fine woman and this should have never happened to her."

Former Virginia Beach City Council candidate Dee Oliver, second from left, stands with her attorneys, Jeremiah Harris, second from right, and Christopher Palermo Rio, right, after the verdict. (File / The Virginian-Pilot)

Cohen, 39, and his attorneys declined to comment.

Oliver testified earlier this week that she found out what Cohen had written when a friend forwarded his post.

"When I saw it I was completely hysterical," Oliver told jurors. "I had never seen anything so vile in my entire life ... I mean, who writes something like that?"

Cohen's comments were made in response to a lengthy post written about Oliver by her estranged stepdaughter, Christine Melcher. Melcher's post depicted Oliver as morally repugnant and implied her political campaign was corrupt. It also accused Oliver of causing a rift between Melcher and her father, Boyd Melcher, the owner of the Kelly's Tavern local restaurant chain.

In his comments, Cohen suggested Oliver had sex with a physical fitness trainer in a hospital bathroom while the man was there for heart surgery — and with his family in the root room. He also wrote that Oliver's first husband "died in the middle of the night a few days after she got her boobs done."

Oliver, 62, testified that the hospital sexual encounter never happened. She also said her first husband, John "Johnny" Oliver Jr., a co-owner of H.D. Oliver Funeral Apartments, died of a brain aneurysm.

Denton called Cohen as an adverse witness. He initially supported Oliver's candidacy, he testified, but later became concerned she was only interested in issues that affected the city's wealthy North End, where she lived — and that she would end up another "crony" for the city's power elite.

He said he preferred Moss and Rouse, who he believed cared more about citywide issues he was most concerned about, including flooding and taxation.

Cohen said Melcher was the source of the information he posted. He also said he hadn't communicated with her before the night they exchanged a series of messages through Facebook Messenger. He posted his comments late that same night, less than a half-hour after he got the information from Melcher.

"I didn't have any reason to believe it was not true," Cohen testified, referring to the information he shared. "She's a family member with information only a family member would know."

Cohen said, however, that he knew Melcher's and Oliver's relationship was strained. And he conceded he did nothing to verify the information she provided.

Melcher, now, was the only witness called to testify by the defense other than Cohen. She told the jury she initially had a good relationship with Oliver and her three daughters. Oliver's oldest daughter is the same age as Melcher and the other two are just a few years younger.

But their connection quickly began to sour after Melcher's father and Oliver got engaged in 2015 just months after her parents' divorce was finalized, she said.

"They became very passive-aggressive toward me," Melcher said of Oliver and her daughters. "Kind of mean girl. Like they were growing up in me."

Melcher admitted to using a knife to slash up a new leather sofa Oliver had chosen for her father's house around that time. She said the incident happened shortly after her father kicked her out of the house.

"She took my dad, I took the couch," Melcher told jurors.

Melcher testified she heard about the alleged hospital sexual encounter from a maid she'd worked for her family. Oliver and Johnson Melcher shared the information with Cohen during their Facebook Messenger exchange, adding "just don't reveal your source," Cohen responded. "Not a word from me, ... A bird tested on bufu."

During her testimony, Oliver told jurors about the devastating impact of Cohen's published comments. She said she stopped going to church, avoided going out and socializing with others, had trouble sleeping, cried often and suffered from headaches and nightmares. She grabbed her teeth so much she cracked four of them and had to get implants.

"I was so embarrassed and humiliated," Oliver said. "I was just extremely self-conscious every time I walked into a room. Even going into the grocery store was difficult."

While Cohen didn't name the physical fitness trainer in his comments, Denton called to the witness stand a man who dated Oliver after she was widowed and frequent the same gym.

Keith Osborne told jurors he'd undergone surgery and was hospitalized during the time he and Oliver were dating. He said Oliver came to visit him, but scoffed at the idea that the two had sex during her visit.

Denton also called three witnesses who said Cohen's reputation for "truth and veracity" in the community was poor: Virginia Beach attorney Jack Drescher, developer Bruce Thompson and businessman Frank Mallon.

The trial apparently proved difficult to ignore in the online Facebook group where the legal trouble started, much to the chagrin of the judge.

Circuit Judge Beverly Snukis called Donna Collins, the administrator of the Vintage North End Facebook group page and a potential witness in the case, into the courtroom Thursday to answer questions about a recent post on the page.

The judge was concerned Collen might be getting information about the proceedings from people inside the courtroom — a violation of court rules. Collen, however, said the information she got was not about testimony, or anything she related to the case, and assured the judge she would follow court rules.

"This whole Facebook thing has gotten so where we are today and you're all continuing to do it," the judge told Collen and two others she'd questioned under oath about the incident. "I suggest you stay because you're all going to get into some grave trouble."

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Topics: the herald trial facebook dee oliver james cohen that city council candidate stanton poole aced

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