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Ex-Smashburger VP Nabs \$1M-Plus Verdict In Age Bias Suit

By [Grace Elletson](#) · [Listen to article](#)

Law360 (December 22, 2025, 6:24 PM EST) -- A former [Smashburger](#) vice president secured a \$1.15 million jury verdict in his age bias suit alleging the company fired him after he complained that his boss made an ageist comment about a colleague, according to a Texas federal court filing.

A [Texas federal jury](#) on Friday handed Thomas Gabriel \$400,000 in back pay and \$750,000 in emotional damages after finding Smashburger, doing business as Icon Burger Acquisition LLC, was motivated by age bias and retaliation when firing the former executive in violation of state labor law.

Gabriel, who is in his 60s, said in his June 2023 suit that he began working for Smashburger as a district manager but eventually moved up to vice president of operations for the west region, a role that required his supervision of 79 locations and 200 employees. When he complained that a supervisor made ageist comments by stating a colleague in his 60s was ineffective because of his age, the same supervisor placed Gabriel on a performance improvement plan in October 2022, according to court records.

The supervisor then asked Gabriel to fire the older colleague, and when Gabriel opposed the decision, he claimed the company retaliated against him by offering him either a demotion or severance. He said he filed an age bias complaint with the company, and in January 2023 Gabriel said he also filed a bias charge with the [U.S. Equal Employment Opportunity Commission](#). That same month he said he was terminated at age 61 through a reduction in force.

In May, Smashburger moved for summary judgment, arguing that Gabriel was placed on the performance improvement plan and ultimately terminated because of legitimate concerns with his management skills. The company said it repeatedly brought concerns to his attention that some of the stores he managed weren't opening, they were closing early and that customers were forced to wait 45 minutes for their food, but that Gabriel wasn't doing enough to address those issues.

The company said it chose employees for the reduction in force based upon their performance and the length of their tenure. Of those considered for the layoffs, Smashburger said it kept on many employees who were over the age of 40, and added that it handed off Gabriel's responsibilities to an employee in his 50s.

In September, U.S. District Judge Kenneth M. Hoyt denied Smashburger's summary judgment motion. The judge said he put forward enough detail showing that the company may have acted out of bias given that he was laid off soon after making age discrimination complaints, his supervisor referred to Gabriel as "grey goose" because of the color of his hair, and that same supervisor allegedly made an ageist comment about a colleague in his 60s.

Todd Slobin, who represents Gabriel, told Law360 that Friday's verdict was a vindication for his client.

"I was honored to represent my client, a hard-working and loyal employee who worked his way up in the company to a vice president position and was terminated after he complained of age discrimination," Slobin said.

Representatives for Smashburger did not immediately respond to requests for comment.

Gabriel is represented by Todd Slobin and Dorian Vandenberg-Rodes of [Shellist Lazarz Slobin LLP](#).

Icon Burger Acquisition LLC is represented by Talley Ray Parker and William L. Davis of [Jackson Lewis PC](#).

The case is Gabriel v. Icon Burger Acquisition LLC, case number [4:23-cv-02574](#), in U.S. District Court for the [Southern District of Texas](#).

--Editing by Amy Rowe.

Update: This article has been updated with a comment from Slobin.

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Grace Elletson

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