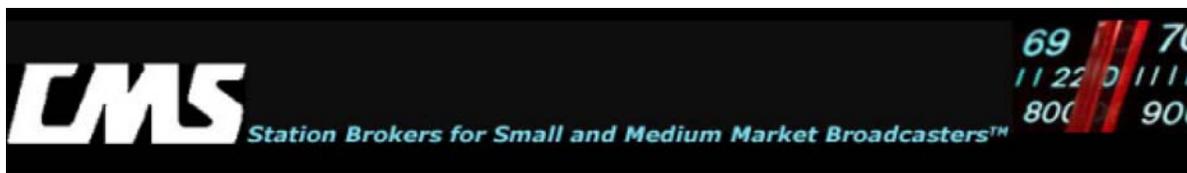


Having trouble viewing this email? [Click here](#)



December, 2014

## The Broadcaster

### [A Newsletter From CMS Station Brokerage](#)

*CMS Station Brokerage offers media brokerage services. We help radio and television station owners sell their stations to qualified buyers. We also help buyers find radio stations which make sense to meet their objectives.*

#### In This Issue

[Stations For Sale](#)

[Station Appraisals](#)

[Crystal Radio Award](#)

[Hallelujah Chorus](#)

[Closing Quote](#)

#### Quick Links

[CMS Station](#)

[Brokerage](#)

[Past issues of our](#)

[newsletter](#)

[The conversation](#)

[continues...stay In](#)

[touch!](#)



[Forward to a Friend](#)

### WHEN AIR TALENT DO BAD THINGS



It is shocking what we are learning about talk show host Jian Ghomeshi's [dramatic fall from grace](#); other examples of air personalities breaking the law include [Neil "Dr" Fox](#); [Ray Teret](#); the [BBC's Stuart Hall](#) and now [Bill Cosby](#) as well as others.

With public mores changing so that more victims are reporting attacks to the police; and with news/gossip travelling as fast as an upload this behavior impacts the public perception of their employer - the station.

Aside from vetting employees during the hiring process and hopefully doing your best to be a good judge of character, what can stations do to protect their image in the community? Below is a column on the subject of Morals Clauses in employment contracts written by attorney Steven J.J. Weisman. It seems to be à propos to the topic.

Let me know what you think.

*Roger*

[Roger Rafson](#)  
[CMS Station Brokerage](#)  
(412) 421-2600

### [Stations For Sale](#)

**Our current list of stations for sale is [at our website](#).**

Contact Roger Rafson for information about any of these opportunities. (412) 421-2600 or [roger@rafson.com](mailto:roger@rafson.com)  
*Feel free to share this list with fellow broadcasters who would want to know!*

## **Station Appraisals**



Think of CMS Station Brokerage when you need a station appraisal. Lenders, station owners, broadcast attorneys and government officials have come to CMS Station Brokerage to appraise the value of station properties. If you know of someone who needs a station valuation please refer them to us.

More information is available [at our website](#) or by contacting [Roger Rafson](#).

## **NAB Crystal Radio Awards**



In each of our newsletters we bring you actual applications from recent Crystal Award winning stations for their commitment to community service. We hope you'll be inspired to do the same!

### **KCVM-FM Cedar Falls, Iowa owned by Fife Communications**

Service to Listeners. Service to Advertisers. Service to Our Community. The mission statement for locally owned and operated KCVM summarizes the success of the station. In 2013, KCVM continued its commitment to community service by donating more than 21,400 minutes of air-time valued at \$856,000 to nonprofit groups and organizations. The station's own 501-C3 charity took its 14th group of chronic and terminally ill children on an all-expense-paid, dream vacation to Disney World. The organization raised a record \$92,900 in the effort, and organized two community events attended by more than 20,000 people. Station staff donated than 832 hours to this effort, and an additional 805 hours to many other worthy causes, for a total of 1,637 hours. The station recognized hard-working and deserving teachers, promoted animal welfare and recognized community heroes and heroes who fought for America in WWII. Overall, KCVM contributed to campaigns that raised \$775,000 for area organizations. We're proud to be part of a local radio family that is a success at business and an overachiever at giving back.

## **Expert Guest**

### **Did SiriusXM Have the Right to Fire Anthony Cumia?**

From [TALKERS](#) July 11, 2014



BOSTON - On Tuesday, July 2 Anthony Cumia, of Opie & Anthony fame, had an altercation with an African-American woman in Times Square who objected to his photographing her. The altercation escalated to a point where Cumia says he was physically assaulted by the woman. He chose not to file a criminal

complaint against her and explained his actions on Twitter by writing "Because I can take some punches w/out wasting the cops time." Cumia did, however take to Twitter to vent his anger as to the incident in a series of tweets that were interpreted by many as being racist and misogynistic. Among those who considered the rants offensive was Cumia's employer, SiriusXM which promptly fired him the very next day and issued a terse statement that reads: "SiriusXM has terminated its relationship with Anthony Cumia of the 'Opie & Anthony channel. The decision was made and Cumia informed late Thursday, July 3, after careful consideration of his racially charged and hate-filled remarks on social media. Those remarks and postings are abhorrent to Sirius XM and his behavior is wholly inconsistent with what Sirius XM represents."

Cumia appeared to be surprised by his firing and tweeted the next morning "Sirius decided to cave and fire me. Welcome to bizarro world. Fired for s\*\*t that wasn't even on the air & wasn't illegal. So, who's next?"

He doesn't get it.

I have not read Cumia's contract, but it undoubtedly contains a "morals clause" which permits his employer to terminate his employment for violating the morals clause. Morals clauses are nothing new in entertainment contracts. They go all the way back to the 1920s. They permit the employer to terminate the employment contract for behavior deemed reprehensible that negatively impacts the employee's public image and by extension that of the employer. The widespread use of morals contracts began in Hollywood in the early 1920s following the public's rejection of movie comedian Roscoe "Fatty" Arbuckle who was being paid by Universal Pictures three million dollars on a three year contract at the time that he hosted a party at which a young woman attending the party died. Arbuckle was arrested and charged with rape and murder. Although he was found not guilty of these charges, the public turned against him, his career was ruined and Universal Pictures took a financial hit. It was shortly thereafter that the entertainment industry, as a matter of course, began to include morals clauses in all of their contracts.

But what is reprehensible behavior sufficient to trigger a morals clause? Times change and a drunken driving conviction that years ago might have resulted in a firing under a morals clause would not be considered so serious as to warrant the invoking of a performer's morals clause. Morals clauses can vary significantly from contract to contract depending primarily upon the relative bargaining power of the employer and the employee. Obviously the employer wants a broad definition such as "any act, or conduct of the employee, on or off duty, which in the opinion of the employer, offends the community or brings discredit, scandal or injury to the reputation of the employer, its sponsors, clients, advertisers or the employee." The employee would want strongly limited morals language such as "conviction of a crime involving moral turpitude." In

today's market, as you well know, the employer is most often in the stronger bargaining position when it comes to morals clauses.

But what about Cumia's complaint that his words were not on the air and they weren't illegal? He is absolutely correct that he did not make the comments on the air and what he said was not illegal. In fact, if he had made his comments on the air he might have actually been in a better legal position. Don Imus' infamous comments about the Rutgers Womens Basketball team as being "nappy headed hos" was done on the air as an attempt at humor without any racist intent. His words did not violate any FCC regulation. He was fired by CBS weeks after the comments when CBS gauged that the incident was adversely affecting its advertising. CBS attempted in its public statements to indicate that it was taking a principled move, but the weeks that it took for it to make the decision speak otherwise. Firing Imus when he had not violated the terms of his contract which specifically required him to be "irreverent" and "controversial" ultimately cost CBS \$20 million that it ended up paying Imus after he sued them for terminating him in violation of the terms of his contract.

Cumia's comments were considered by Sirius XM to be worse than Imus' words because unlike Imus, they were not done in any attempt at entertainment. As I established earlier, I have not read Cumia's contract, but if it has, and again, it most likely does, have a morals clause that deals with off duty remarks or actions that bring harm to the reputation of the employer, he may well have been legally terminated.

But the game doesn't end there.

Generally, entertainment contracts contain arbitration clauses when there is a disagreement as to the interpretation of the contract and it is rare to have the morals clause be interpreted in the sole discretion of the employer. Therefore Cumia may have grounds to argue that his actions did not sufficiently offend the community and bring harm to SiriusXM. It would not be surprising to see Cumia demand arbitration.

However, for the rest of us it is important to remember that the battles you can avoid are the best battles. In an era of cell phone cameras and totally pervasive social media, everyone is always in the public eye. Everything you do regardless of whether it is on the air or not can affect your employment. That is just a fact of modern day life and the sooner you recognize it and act accordingly, the better will be your job security. It also helps to have a good lawyer negotiate your contract. Just saying.

##

Steven J.J. Weisman is lawyer, professor at Bentley University and the legal editor of Talkers Magazine. He also writes the blog [www.scamicide.com](http://www.scamicide.com) .

Dear Roger,

Each year at this time I share with my friends in the business this [link to my favorite version of the Hallelujah Chorus from Handel's Messiah](#). I hope you enjoy it, too.

Best wishes for the holidays. May you begin the new year with your dial tuned to the frequencies of the people you cherish most.

*Roger*

### Closing Quote



*"You don't have to be strong to survive a bad situation; you simply need a plan."*

**Shannon L. Alder**

#### [Forward email](#)



This email was sent to rafson@cmsradio.com by [roger@rafson.com](mailto:roger@rafson.com) | [Update Profile/Email Address](#) | Rapid removal with [SafeUnsubscribe™](#) | [Privacy Policy](#).



CMS STATION BROKERAGE | 1439 Denniston St. | Pittsburgh | PA | 15217