

FEB 25 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL DRUMM,

Plaintiff - Appellant,

v.

MORNINGSTAR, INC.,

Defendant - Appellee.

No. 09-17572

D.C. No. 3:08-cv-03362-TEH

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Thelton E. Henderson, Senior District Judge, Presiding

Argued and Submitted February 18, 2011
San Francisco, California

Before: SCHROEDER and THOMAS, Circuit Judges, and ADELMAN, District
Judge.**

Michael Drumm appeals the district court's grant of summary judgment with
respect to his discrimination claim on the basis of sexual orientation. Drumm,

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Lynn S. Adelman, District Judge for the United States
District Court for the Eastern District of Wisconsin, sitting by designation.

however, failed to establish a prima facie case of discrimination because he failed to show that “he was performing competently in the position he held.” *Guz v. Bechtel Nat’l, Inc.*, 24 Cal. 4th 317, 355 (2004). The evidence shows that Drumm acted unprofessionally in his relationship with two of his employer’s major clients and that both clients expressed their discontent with Drumm’s performance. Drumm failed to submit specific facts that would create a genuine issue of material fact as to the quality of his performance or the reasons for his termination. Fed. R. Civ. P. 56(c).

AFFIRMED.