

A solid yellow right-angled triangle pointing towards the top-left corner.

**BLOGS**

Franchise Sales/Transactions

## Court Finds in Favor of Franchisor on Registration and Earnings Claims

A Minnesota federal court recently granted a franchisor's motion for summary judgment on certain claims pertaining to the franchisor's alleged violations of the Minnesota Franchise Act. In *Ellering v. Sellstate Realty Sys. Network, Inc.*, 2011 U.S. Dist. LEXIS 75852 (D. Minn. July 13, 2011), the issue presented was whether the franchisor was registered to sell franchises in Minnesota and whether the franchisor had misrepresented the potential earnings of the area franchise agreement. The plaintiff-franchisees claimed that the franchisor was not registered when it sold the franchise and thus had violated the Franchise Act. The franchisor filed for summary judgment on this claim contending that, even if true, the claim was time-barred under the Franchise Act's three-year statute of limitations. The franchisees contended that the claim was not barred because they allegedly "discovered" the claim during the course of discovery. The court sided with the franchisor, stating that the discovery rule ordinarily applies to fraud-based actions and that failing to register is not fraudulent conduct. Even if the discovery rule were applicable, the court held that the franchisees could have discovered this claim well before the expiration of the limitations period. The court cited to the Minnesota Department of Commerce's website, which provides a list of registered franchisors, and noted that it is a matter of public record whether a franchisor is or is not registered with the state.

As to the earnings claim, the court stated that it failed for a different reason. Although the claim was timely, the court concluded that the franchisees could not have reasonably relied on the alleged representations given the explicit language in the Uniform Franchise Offering Circular and area franchise agreement. The UFOC should have "planted seeds of doubt" with the franchisees given the disclaimer language pertaining to any earnings claims. Moreover, the franchisees had expressly acknowledged in signing the area franchise agreement that they did not rely on any forecast or earnings claim. Given these facts, the franchisees could not have reasonably relied on the alleged misrepresentations of the franchisor.