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Franchise Sales/Transactions

Disclaimers in Franchise Documents Help Defeat Franchisee's Sales Fraud Claims Against Cold Stone

In *Cold Stone Creamery, Inc. v. Lenora Foods I, LLC*, 2009 WL 1532736 (11th Cir. June 3, 2009), the Eleventh Circuit Court of Appeals affirmed a decision dismissing franchisee Lenora's counterclaims against Cold Stone Creamery, Inc. under the Florida Franchise Act and the Florida Deceptive and Unfair Trade Practices Act. The court dismissed these claims due, in part, to specific statements in Cold Stone's franchise documents encouraging franchisees to conduct independent investigations before purchasing a franchise and notifying franchisees of the risks in purchasing a franchise.

In its first counterclaim, Lenora alleged that Cold Stone violated the Florida Franchise Act by misrepresenting Lenora's ability to succeed if it purchased a Cold Stone franchise. The district court granted Cold Stone's summary judgment motion on the counterclaim, and the Eleventh Circuit affirmed, finding that Lenora failed to provide the court with evidence that it relied on any misrepresentation. In particular, the court noted that Cold Stone provided Lenora with a detailed disclaimer about the risks of purchasing a franchise and encouraged it to conduct its own independent investigation. Further, the court found that the parties' franchise agreement did not guarantee Lenora's success. Finally, the record demonstrated that Lenora had conducted an independent investigation and understood the franchise agreement it signed.

In its second counterclaim, Lenora alleged that Cold Stone violated the Florida Deceptive and Unfair Trade Practices Act. In particular, Lenora alleged that before the sale of the franchise, two franchisees who appeared to be acting as agents of Cold Stone made statements to Lenora about the chances of success if it purchased a franchise. The district court granted Cold Stone's summary judgment motion, and the Eleventh Circuit affirmed, finding that Lenora failed to prove that the alleged actions were "likely to deceive a consumer acting reasonably in the same circumstances." The court noted that the franchise agreement stated that franchisees cannot make financial representations on Cold Stone's behalf. In addition, Cold Stone provided Lenora with a financial performance representation that contained specific disclaimers notifying prospective franchisees that they may not achieve the same results. As a result, the court concluded that no reasonable consumer would have been deceived by the two franchisees' statements.