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BLOGS

Terminations

Florida Court Upholds Immediate Termination of Franchisee Who Solicited a Minor Over the Internet

In *Cleveland v. AmeriSpec, Inc.*, Case No. 2007 CA 8747 (Fla. 12th Jud. Dist., Nov. 16, 2009), a Florida trial court upheld the immediate termination of a husband and wife franchisee after the husband was arrested for transmitting harmful material to a minor by use of a computer and using a computer for child exploitation. Gray Plant Mooty represented the franchisor in this case. Two years after the husband and wife had purchased an AmeriSpec franchise, the husband was arrested and charged with multiple counts of soliciting a minor over the Internet. According to local news coverage of his arrest, the husband was arrested after communicating on the computer with a Palm Beach County police detective posing as a 14-year old girl. The suspect sent explicit pictures of himself, then set up a meeting place. After learning of the husband's arrest and associated adverse negative publicity, AmeriSpec immediately terminated the franchise agreement without the opportunity to cure under the "Damage to Goodwill" provisions. Thereafter, the franchisee's wife brought an action against AmeriSpec for wrongful termination of the franchise and unjust enrichment.

Initially, the court noted that there was no issue as to whether the acts committed by the husband reflected materially and unfavorably upon the operation and reputation of AmeriSpec; these acts were found to be a sufficient basis to terminate the husband immediately under the terms of the agreement. As to the wife's claims, the court noted that the term "Franchisee" was defined as "...one or more persons, a corporation or a partnership, as the case may be..." and there was no indication that the rights of the husband and wife "Franchisee" were divisible or separate. Finally, the court noted that under Florida law, individual partners are liable jointly and severally for all obligations of a partnership. The court found as a matter of law based on plain reading of the franchise agreement that both the husband and wife were bound by the actions of the other, thus the court granted AmeriSpec's motion to dismiss the wife's claims.