

**BLOGS**

Fraud/Misrepresentation

## Franchisees Entitled to Rescission Based on Sales Fraud

In *Legacy Academy v. Mamilove, LLC*, 2014 Ga. App. LEXIS 556 (Ga. Ct. App. July 16, 2014), the Georgia Court of Appeals affirmed a judgment in favor of franchisees who alleged that their franchisor, Legacy Academy, Inc., fraudulently induced them to enter into a franchise relationship by making a false earnings claim during the parties' precontract negotiations. When the franchisees first entered into discussions to open a Legacy daycare franchise, Legacy's representatives gave them a pro forma financial statement showing the net income a new franchisee could expect to earn after the first, second, and third years of operation that was purportedly based on the historic performance of existing franchisees. The representatives later provided an offering circular and franchise agreement to the franchisees and told them that they needed to sign the documents that same day or risk losing their preferred franchise location. The franchisees immediately signed the documents without reading them or consulting an attorney. After their daycare center opened and failed to perform to expectations, the franchisees sued, claiming that Legacy had made a false earnings claim that was prohibited by FTC regulations and seeking rescission of the franchise agreement, among other relief. After the trial court entered judgment on the jury's verdict in favor of the franchisees, Legacy appealed on the grounds that rescission was unwarranted.

In affirming the judgment, the appellate court held that the evidence at trial demonstrated that Legacy's representatives intentionally prevented the franchisees from reading the franchise agreement before signing it in order to conceal from them certain provisions in the agreement stating that Legacy had made no representations, warranties, or earnings claims during the parties' negotiations. The court concluded that the franchisees could not be deemed to have knowingly agreed to such provisions and to have waived their claims as a result. Because the evidence supported the jury's verdict on the rescission claim, the franchise agreement was no longer valid or enforceable and the franchisees were not prevented from proving that they reasonably relied on the fraudulent earnings claim when they executed the agreement.

The court also determined that the franchisees were entitled to pursue a claim under Ga. Code Ann. § 51-1-6, a statute that authorizes a plaintiff to recover damages for the breach of a legal duty arising from a statute that does not itself provide a private right of action. The franchisees' claim was based on Legacy's alleged violations of the FTC Rule's disclosure requirements concerning financial performance representations. The court concluded that there was evidence to

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support the jury's verdict against Legacy on this claim and upheld the judgment in favor of the franchisees.